

Chapter 5B

Cost cap for rent-to-own agreements



5B.2 Prohibition on RTO firms from entering into RTO agreements

Entering into, varying or supplementing agreements: requirements as to the cash price of new goods

- 5B.2.1** **R** A **RTO firm** must not enter into, vary or supplement a **RTO agreement** where the *cash price* of the *goods* (which are not second-hand *goods*) supplied under the agreement exceeds the **benchmarked price**.
- 5B.2.2** **R** Except where **CONC 5B.2.4R(1)** applies, a **RTO firm** must establish the **benchmarked price** by taking the following steps:
- (1) The **RTO firm** must find three benchmarking *cash prices*.
 - (2) A benchmarking *cash price*:
 - (a) must be a *cash price* at which the *goods* are currently offered or available for sale to *consumers* in the *United Kingdom*, but not by another **RTO firm** or an **associate** of the **RTO firm** establishing the **benchmarked price**;
 - (b) save where paragraph (3) applies, must be for the same *goods* as the **RTO firm** intends to supply under the **RTO agreement**;
 - (c) where paragraph (3) applies, must be for *goods* comparable, by reference to any features or characteristics of the *goods* that might reasonably be expected to affect the *cash price*, to those which the **RTO firm** intends to supply under the **RTO agreement**; and
 - (d) may be a *cash price* charged by a **retail revolving credit business** provided the other two benchmarking *cash prices* are not.
 - (3) This paragraph applies where, following a reasonable search of the market, the **RTO firm** has been unable to find three benchmarking *cash prices* that satisfy the requirements in paragraph (2)(b).
 - (4) Where paragraph (2)(d) applies, the median of the three benchmarking *cash prices* is the **benchmarked price**.
 - (5) Where paragraph (2)(d) does not apply, the highest of the three benchmarking *cash prices* is the **benchmarked price**.
 - (6) Each item of *goods* being supplied under one **RTO agreement** must be benchmarked individually except where the **RTO firm** is offering a bundle of *goods* to be supplied for one *cash price*.

- (7) Except where paragraph (8) applies, where a bundle of *goods* is being supplied under one **RTO agreement** for one *cash price*, the **RTO firm** must benchmark against other *goods* supplied as bundles, in the way described in paragraphs (1) and (2) above.
- (8) This paragraph applies where:
 - (a) a **RTO firm** wishes to supply a bundle of *goods* under one **RTO agreement** for one *cash price*;
 - (b) the **RTO firm** has been unable to find three benchmarking *cash prices* based on the same bundle of *goods*; and
 - (c) any comparable bundle of *goods* that the **RTO firm** would need to rely upon to establish a **benchmarked price** contains one or more *goods* of significantly different value from those in the bundle that the **RTO firm** wishes to supply.
- (9) Where paragraph (8) applies the **RTO firm** must:
 - (a) separately benchmark each item in accordance with paragraphs (1) and (2) above; and
 - (b) set separate *cash prices* for each of those items.
- (10) Where a **RTO firm** reasonably considers that a particular *cash price* is so far outside the range of *cash prices* it has found that no reasonably-informed *UK consumer* is likely to pay that *cash price*, the **RTO firm** must not use that *cash price* as a benchmarking price.
- (11) In assessing whether a particular *cash price* is so far outside the range of *cash prices* it has found that no reasonably-informed *UK consumer* is likely to pay that *cash price* a **RTO firm** must, in particular, consider:
 - (a) the difference between that *cash price* and the other two benchmarking *cash prices* the **RTO firm** has found;
 - (b) evidence suggesting that the *cash price* is out of date, for example where the item is no longer in stock; and
 - (c) any other factors suggesting that the seller does not expect to sell the *goods* at that *cash price*.

5B.2.3

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- (1) New *goods* are *goods* which are not second-hand *goods* and include, for example, ex-display *goods*.
- (2) The range of features which **RTO firms** might consider under ■ CONC 5B.2.2R(2)(c) when identifying comparable *goods* includes brand, quality, functionality, performance, size and colour, but only where these features could reasonably be expected to affect the *cash price*.
- (3) In relation to ■ CONC 5B.2.2R(10), examples of cases where the *FCA* would expect a **RTO firm** to exclude a *cash price* include, but are not limited to:
 - (a) *cash prices* that have been set primarily for a non-UK market; and
 - (b) *cash prices* that have clearly been set in error.

Establishing a benchmarked price for goods that will be new to the UK market

5B.2.4 **R**

- (1) This paragraph applies to *goods*:
 - (a) that will not be sold exclusively by a **RTO firm**;
 - (b) that are not currently offered for sale on the *UK* market; and
 - (c) that have features so technologically different from those of *goods* currently for sale on the *UK* market that it is not possible to identify *goods* that are genuinely comparable.
- (2) Where paragraph (1) applies, a **RTO firm** must establish a **benchmarked price** for the *goods* that is reasonable, having regard in particular to:
 - (a) any price at which the *goods* have been advertised in the *United Kingdom* prior to launch;
 - (b) any recommended retail price for the *goods*;
 - (c) any other recommended price for the *goods* that has been provided by a supplier;
 - (d) where the *goods* replace an existing model:
 - (i) the *cash price* at which the existing model was first offered for sale in the *United Kingdom*; and
 - (ii) where the existing model replaced a previous model, the difference between the *cash price* of the previous model and the *cash price* of the existing model at the time the existing model was first offered for sale.

Timing

5B.2.5 **R**

- A **RTO firm** must establish the **benchmarked price** for goods:
- (1) by the time it offers to supply the *goods* under a **RTO agreement** for the first time;
 - (2) by the time it increases the *cash price* at which it offers to supply the *goods* under a **RTO agreement**;
 - (3) where a **benchmarked price** has been established under **CONC 5B.2.4R(2)**, by the end of the period of 3 *months* that begins on the day on which the *goods* were first offered for sale on the *UK* market; and
 - (4) no later than 12 *months* after the last time it established a **benchmarked price** in accordance with any provision of this *rule*.

5B.2.6 **G**

The fact that a **benchmarked price** for *goods* has been established before the coming into force of **CONC 5B** does not prevent it satisfying the requirements of **CONC 5B.2.5R(1)**. Subsequent benchmarking then has to be carried out in accordance with **5B.2.5R(2)**, (3) or (4) in the normal way.

Entering into, varying or supplementing agreements: requirements as to the cash price of delivery and installation of goods

5B.2.7

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A RTO firm must not enter into:

- (1) a RTO agreement;
- (2) an arrangement to vary or supplement an existing RTO agreement by the supply of additional or different goods under that agreement; or
- (3) a connected agreement,

where the *cash price* for delivery and/or the *cash price* for installation exceeds the relevant **benchmark price**.

5B.2.8

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- (1) A RTO firm must establish the **benchmark price** for delivery or installation of goods supplied under a RTO agreement by selecting the *cash prices* charged for, as relevant, delivery or installation of the same category of goods by three retailers (who must not include a RTO firm or an associate of the RTO firm establishing the **benchmark price**) and taking the median of those prices.
- (2) A RTO firm must establish the **benchmark price** for delivery and/or installation:
 - (a) by the time it offers to supply the relevant goods under a RTO agreement for the first time;
 - (b) by the time it increases the *cash price* at which it offers to provide delivery or installation in relation to goods supplied under a RTO agreement; and
 - (c) no later than 12 months after the last time it established a **benchmark price** in accordance with any provision of this rule.

5B.2.9

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The fact that a **benchmark price** for delivery and/or installation has been established before the coming into force of ■ CONC 5B does not prevent it satisfying the requirements of ■ CONC 5B.2.8R(2)(a).

5B.2.10

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- (1) The FCA does not expect RTO firms to identify the *cash prices* for delivery and/or installation of identical goods. It will be sufficient for RTO firms to select *cash prices* for the delivery and/or installation of the category of goods. For example, RTO firms would need to find *cash prices* for the delivery and/or installation of washing machines but not for a particular model of washing machine.
- (2) When selecting benchmarking *cash prices* for delivery, RTO firms should select prices which apply in comparable circumstances to those that apply to the RTO firm, for example in terms of distance or timing.

Entering into, varying or supplementing agreements: total cost of credit cap

5B.2.11 **R**

- (1) A **RTO firm** must not enter into a **RTO agreement** for *goods* that provides for the payment by the *borrower* of one or more **charges** that, alone or in combination with any other **charge** under the **RTO agreement** or a **connected agreement**, exceed or are capable of exceeding the *cash price* of the *goods* plus, where relevant:
 - (a) the *cash price* for delivery;
 - (b) the *cash price* for installation; and
 - (c) the *cash price* of *goods* or services supplied under a **connected agreement**.

- (2) A **RTO firm** must not enter into an arrangement to vary or supplement a **RTO agreement** by the supply of additional or different *goods*, where the arrangement provides for the payment by the *borrower*, in relation to the additional or different *goods*, of one or more **charges** that, alone or in combination with any other **charge** under the **RTO agreement** or a **connected agreement**, exceed or are capable of exceeding the *cash price* of the additional or different *goods* supplied, plus, where relevant:
 - (a) the *cash price* for delivery;
 - (b) the *cash price* for installation; and
 - (c) the *cash price* of *goods* or services supplied by a **connected agreement**.

5B.2.12 **G**

Where more than one item of *goods* and/or services is supplied under one **RTO agreement**, the total amount of the **charges** that may be payable by the *borrower* under that agreement should be calculated with reference to the sum of the *cash price* of each of the *goods* and, where relevant, services. For example, where a **RTO agreement** covers the supply of a washing machine and dryer, and delivery and installation of both:

Washing machine:	<i>cash price</i>	=	£200
Dryer:	<i>cash price</i>	=	£250
Delivery:	<i>cash price total</i>	=	£30
Installation:	<i>cash price total</i>	=	£20
The sum of the <i>cash prices</i>		=	£500

The total amount of **charges** that may, in addition, be payable by the *borrower* must not exceed £500.