

Senate Subcommittee on Antitrust, Competition Policy and Antitrust
“Pricing Policies and Competition in the Contact Lens Industry:
Is What You See What You Get?”

Questions for the Record: Senator Amy Klobuchar

For Dr. Knight:

1. Under this policy, I understand that retailers can't offer a product priced below Johnson & Johnson's minimum retail price. But if a retailer offered and sold the product at that specified price, could they also offer their own store coupons, rebates, or promotions such as bundling discounts or volume discounts? Would eye care professionals still be in compliance if they offer a free eye exam, or accept a rebate towards the cost of an eye exam, if the patient purchases the contact lenses from them?

RESPONSE:

- A. Retailers maintain the right to offer store coupons, rebates or promotions (discounts) under the ACUVUE® Unilateral Pricing Policy (UPP), provided that the final net price for the product covered by the UPP remains at or above the UPP Minimum Retail Price, after discounts are applied. *For example: 1800contacts currently sells ACUVUE® OASYS® for ASTIGMATISM for \$47.99 per box. The UPP Minimum Retail Price is \$40.00. Under the terms of the UPP, 1800contacts could offer a discount of up to \$7.99 per box from their current price. 1800contacts does offer a \$40 savings on Annual Supply purchases (price of \$42.99 when 8 boxes are purchased) in-compliance with the UPP. They could also offer an additional \$23.92 in savings on an Annual Supply of this brand, and remain in compliance with the ACUVUE® UPP.*

The screenshot shows the 1800contacts website interface. At the top, there's a navigation bar with the 1800contacts logo, a search bar, and links for 'Fast, Free Shipping', 'Low Price Guarantee', and 'Contact Lens Specialist'. Below the navigation bar, there's a breadcrumb trail: '1. Find your contacts > 2. Enter your prescription > 3. Checkout > CART > ADDRESS > EYE DOCTOR > REVIEW'. The main content area displays the product 'ACUVUE® OASYS® for ASTIGMATISM by Johnson & Johnson'. A 'NEW PRICE' badge is present. The product image shows a box of ACUVUE OASYS for ASTIGMATISM. Below the image, there's a 'Regular Price' of \$47.99 per box and a 'Discounted Price' of \$42.99 per box. A banner at the bottom states 'Now save \$40 when you buy 8 boxes (Annual Supply) \$47.99 \$42.99 / box after rebate'. A '100% SATISFACTION GUARANTEE' badge is also visible.

- B. Johnson & Johnson Vision Care, Inc. does have a “Combined Product Discount” exception under the ACUVUE® UPP. When an annual supply of an ACUVUE® UPP product is sold, the retailer is subject to no pricing restrictions on other optical products, including eye exams. The ACUVUE® UPP product price is required to stay at or above the Minimum Retail Price, and clearly shown this way on the customer receipt and in any advertising of this type of promotion.

- C. Eye Care Professionals, or any retailer that offers eye exams, could discount the cost of an eye exam per the above Combined Product Discount provision, subject to the same customer receipt and advertising guidance.
2. How do you plan to enforce the unilateral price policy? Will any costs associated with enforcing the policy be passed onto consumers?

RESPONSE:

- A. Johnson & Johnson Vision Care, Inc. has three separate processes for proactive Market Price monitoring. First, there are internal resources (J&J employees) dedicated to researching, confirming and notifying sellers of UPP violations. In addition, Johnson & Johnson Vision Care, Inc. has retained two (2) independent firms to assist in monitoring Market Prices. The first of these firms monitors all on-line pricing and advertising, the second conducts in-store price validations nationwide. All customer types, regardless of size, geography, distribution method, etc. are included in one or more of these monitoring efforts. If a customer is found to be in violation of the UPP, then Johnson & Johnson Vision Care, Inc. will no longer sell products subject to the policy to that customer.
- B. Johnson & Johnson Vision Care, Inc. does not sell ACUVUE® products directly to consumers. Neither our direct customers nor consumers will bear any costs associated with the UPP enforcement processes.