

# WHAT IS THE SALE TO LOSS AND WHEN DOES IT TAKES PLACE?

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In the last few months we have seen how the TAXI –vs- UBER conflict has occupied pages and pages of Spanish national newspapers.

Therefore, a lot has also been written about unfair competition and the sale at a loss in a specific market such as transports, catering industry or even the legal sector. But first of all, how can we define unfair competition and sale of loss and where is it regulated?

We can define it following the *article 17 of the Unfair Competition act* as any sale of goods or services carried out by an economic agent at a price that must necessarily be below the cost of acquisition or production, therefore it seems clear that what the act punish a certain behavior by which a competitor is capable of losing benefit in order to annul its closest competitor.

What requirements must be met for a commercial strategy to be considered a sale at a loss?

Spanish case law is unanimous when confirming that it's a "*loss to the direct competitor*"so that a sale at a loss can occur. Following again *article 17 of the Unfair Competition act* it also requires the concurrence of three requirements:

- a) It is liable to mislead consumers.
- b) It must necessarily have the spirit of discrediting potential competitors.
- c) In determined cases, also when it is part of an eradication strategy of a competitor or group of determined competitors.

The first requirement is established for all cases and seems to operate as an objective budget and there must necessarily be a loss in the sale in the same market as the competitor, and therefore mislead the final consumer.

Our personal opinion focuses on how illogical it is to think that an entrepreneur can systematically sell their products or services at a loss, if we take into account the constitutional right to freedom of enterprise, it would not be very logical to deprive the entrepreneur of his right to benefit consumers with such low prices.

Written by Lucio Morcillo.