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## Consultation Response

**Which? response to the CMA's consultation on the price transparency guidance**

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### Summary

Which? welcomes this opportunity to respond to the CMA's consultation on the draft guidance for the price transparency provisions of the Digital Markets, Competition and Consumers Act 2024 (DMCC Act). The Guidance is a critical tool to ensure that the Act delivers a high level of business compliance and therefore improved consumer protection. Consumers currently experience drip and partition pricing across a range of different sectors and there are many examples of pricing practices that do not comply with this draft guidance despite the new provisions coming into effect in April. It is therefore important that the guidance is supported by effective enforcement actions, including for the travel, hospitality and retail sectors, as well as in the case of online marketplaces.

We are supportive of this guidance as we believe it is clear, well-structured and helpful in illustrating how the DMCC Act provisions should apply to a range of commercial practices. However, given the prevalence of such practices in recent years, we would like this guidance to incorporate a number of additional considerations that we believe are essential for ensuring clarity, consistency, and effective enforcement of the rules around drip pricing, partition pricing and price transparency more generally. Based on our research and observations, we have identified several areas where further detail, clarification, and illustrative examples would significantly enhance the usefulness of the guidance for both businesses and enforcement bodies as follows:

- A broader range of examples to support the definition of 'an invitation to purchase' which capture the complexities and evolving mis-practices in the market, including for services, new business models and multi-party supply chains.
- Examples from a wider range of sectors, such as those relevant to the travel sector, one example of where we have found disproportionate levels of consumer detriment experienced.
- Examples and additional flow charts which aid relevant agencies with the enforcement of drip pricing practices.
- Examples which will help to enhance cross-border price transparency and international business compliance.

- Reference to the CMA's guidance on how the invitation to purchase provisions and wider price transparency provisions apply in the case of dynamic pricing to ensure that advice is clear and joined up.

This proactive approach will help ensure that consumer protections concerning price transparency remain effective and relevant, safeguarding individuals from emerging threats. It will also provide businesses with clearer expectations and guidelines, promoting fair competition and trust in the marketplace. Additionally, this comprehensive guidance would serve as a valuable guide for enforcers, offering them a reliable reference to uphold consumer rights. It would also act as a strong deterrent against illegal business practices, reinforcing the importance of compliance and ethical conduct in the digital economy. We urge the CMA to consider these additions to make the guidance as comprehensive and future-proof as possible.

## Full response

### **Q1. Do you have any comments on the structure or clarity of the Draft Guidance?**

We are pleased with the structure and clarity of the Draft Guidance for the price transparency provisions of the Digital Markets, Competition and Consumers Act 2024 (DMCC Act) as a way to provide a practical and useful aid for businesses to comply with the law. The guidance is a crucial step towards ensuring businesses and consumers understand the law, ensuring consumers are treated fairly and are protected from exploitative practices, such as drip pricing.

As well as aiding consumer and business understanding of how it works, clear examples of how the law should be applied can be a deterrent for non-compliance as it removes ambiguity. However, we think it would also be helpful for the guidance to highlight the relevant economic sector for each example provided. This would enhance usability, especially for businesses seeking to ensure compliance and for enforcement bodies referencing the guidance in practice.

### **Q2. Do you have any comments about what an invitation to purchase is (Chapter 2)?**

We welcome the definition of an invitation to purchase and believe these rules are crucial in ensuring that the total price of a product includes all fees, taxes, and other mandatory payments that consumers will necessarily incur are clearly communicated to consumers up front. This transparency is vital for protecting consumers from hidden costs and ensuring they can make informed purchasing decisions. It is helpful that the guidance specifies what is, as well as what isn't an invitation to purchase. However, we believe that the draft guidance could be further strengthened by including more examples or detailed information regarding:

- We believe the guidance should further acknowledge the broader complexities involved in the marketing of products and services to consumers. In particular, there is a need to distinguish between promotional language, often referred to as “mere puffs” and genuine price representations or negotiations. This is especially relevant in contexts such as timeshare presentations or bundled service offerings, where persuasive marketing techniques may blur the line between advertising and actual pricing commitments. Additional examples and definitions within the guidance across a broader range of sectors and types of products and services would help ensure that consumers are not misled and that businesses understand where the boundaries lie in their promotional practices.
- We would also recommend that the guidance include specific examples of pricing practices that are considered non-compliant under the DMCC Act. For instance, phrases such as “plus booking fee” or “plus delivery charge” are still widely used across travel and retail websites, often without clear upfront disclosure of the actual costs involved. Including such examples would help traders better understand their obligations and reduce ambiguity around what constitutes a breach. It would also empower enforcement bodies and consumers to more easily identify and challenge misleading pricing tactics.
- We would suggest that the guidance include a broader range of examples relating specifically to services provided to consumers. Services often involve multiple components, such as booking, delivery, installation, or ongoing support, which can make pricing structures more complex and less transparent. Given this variability, it would be particularly helpful for the guidance to clarify how the rules apply in service contexts through detailed, practical examples. This would aid both businesses and enforcement bodies in interpreting and applying the legislation consistently.
- We believe the guidance should explicitly address the emergence of evolving pricing models and clarify how existing consumer protections apply in these contexts. In particular, the growing use of consumer data to inform pricing strategies has led to the widespread adoption of dynamic pricing, where prices fluctuate in real time based on supply, demand, and user behaviour. As highlighted in the CMA’s recent [policy paper](#) on dynamic pricing, consumer law not only prohibits misleading actions or omissions, but also requires that when a business makes an ‘Invitation to Purchase’, it must clearly present the total price the consumer will pay. If the price displayed at the point of invitation differs from the final amount charged, such as when a price changes after an item is added to an online shopping basket and the consumer proceeds to checkout, this may breach consumer law and could be considered a misleading action. Recent high-profile cases, such as the Oasis/Ticketmaster incident, have brought this issue into sharper focus. We therefore recommend that the guidance include specific examples of such practices to help businesses understand their obligations and ensure compliance.

**Q3. Do you have any comments about what needs to be included in an invitation to purchase (Chapter 3)? Is the guidance on when the presentation of prices might be misleading clear? Are there topics covered in this section that would benefit from further guidance?**

We agree it is fundamental that traders are responsible for ensuring that the prices of the products presented in an invitation to purchase do not mislead consumers. We agree that the price of a product is likely to be misleading if it is not a realistic, meaningful and attainable price. Generally, we find the guidance and examples clear and helpful. However, we believe that the draft guidance in Chapter 3 could be further strengthened by including more examples or detailed information regarding:

- In paragraph 3.5: Further examples of what is likely to be appropriate in the case of the use of 'from prices' would be helpful. We have found issues here in relation to some hotel and flight bookings, but they are also used across a range of products and services. Also, traders would likely benefit with some clarification of when they can become 'bait prices' a banned practice.
- In paragraph 3.6, there is a reference in brackets to '*for example, enabling work for home improvements*' which it would be helpful to explain in more detail.
- Paragraph 3.9: this should have more prominence at the beginning of the guidance document. Also, the paragraph reiterates the provision from the DMCC Act and therefore refers to 'the consumer' in the context of section 230(4) of the Act. It would be helpful if the CMA could clarify whether, in its view, this means 'all consumers', 'the average consumer', or 'a specific consumer' - because different consumers may necessarily incur different fees or charges in different circumstances. For example, in the context of a flight booking, it may be necessary for a parent to incur the cost of booking a seat to ensure they are next to their child; whereas that fee would not be necessary for a sole traveller. Therefore, for the parent traveller, this is a fee that they will necessarily incur if they purchase the product - but this wouldn't be the case for all consumers. We think it would be helpful to clarify whether such fees, which a significant proportion (but not all) consumers would necessarily incur, fall within the 'total price' as outlined in section 230(4).

**Q4. Do you have any comments about the core principles for what the 'total price' must include and what businesses need to do if it is not reasonably possible to calculate it (Chapter 4)? Are there topics covered in this section that would benefit from further guidance?**

We think that the guidance on what charges are mandatory versus optional is helpful i.e. if the consumer cannot purchase a product without the payment of a charge (i.e. any fee, tax, charge or other payment), then that charge is mandatory and not genuinely optional. As mandatory charges, these must be included in the headline price.

We would like to suggest that Sections 4.2 to 4.4 should include findings from our work on booking Flight seats. From a recent Which? investigation, we know that the use of 'drip pricing' can make it very difficult for consumers to compare prices and assess what the best

value is when booking flights. In particular, we found that the cost of cabin bags or seat selection is often not included in the headline price, although these add-ons, which can vary by travel dates and route selected, can increase the price significantly. Inconsistent approaches across airlines can also make it difficult to compare prices. We also have concerns about the practice of charging parents to sit next to their child. Some of these charges can, in our view, be considered as charges that consumers must necessarily incur, while others are optional. It would therefore be very helpful to have a section in the guidance that explains how the law would apply in different scenarios.

In paragraph 4.18, which refers to the exceptional circumstances where there are limitations resulting from the means of communication, it would be helpful to provide some examples of what the CMA might see as exceptional cases, as this may reduce the scope for businesses to take advantage of this provision and rely on it inappropriately.

**Q5. Do you have any comments about the guidance on specific types of charges and pricing (Chapter 5)? In particular:**

- a. Is the guidance on how businesses should present ‘per-transaction charges’ such as administration or booking fees in early-stage advertising and on traders’ websites respectively clear? Is it clear when delivery fees will be mandatory? Are there additional means of providing this information to consumers that businesses may be able to use to comply with the UCP provisions, particularly in the context of how the prices are presented on a trader’s website/app, that the CMA should consider providing guidance on?**
- b. Is the guidance on how businesses should present ‘delivery fees’ in early-stage advertising and on traders’ websites/apps respectively clear? Is it clear when delivery fees will be mandatory? As above, are there other ways of providing this information to consumers that the CMA should consider providing guidance on?**
- c. Is the guidance on how businesses should present ‘local charges and taxes’ in early-stage advertising and on traders’ websites/apps respectively clear? This guidance reflects the guidance that the CMA has previously provided in relation to car rental and online hotel booking, is it helpful for businesses to have this consolidated in the Draft Guidance?**
- d. Is the guidance on how businesses should present ‘monthly pricing’ clear?**

The illustrative examples are clear, although we would welcome further clarification on which industries the guidelines refer to, for example making the distinction between telecoms and digital services.

- e. Are there other types of charges or pricing that the CMA should consider providing specific guidance on?**

We are pleased to see the inclusion of illustrative examples of commercial practices in the Draft Guidance on topics a. to e. As these examples are invaluable in demonstrating how

the provisions apply in real-world case scenarios, we would like to see more examples (or more details) provided by the CMA in the guidance regarding the following areas:

- Cross-border elements, including examples of transparent exchange rates and any associated fees, and full disclosure of customs charges and duties and how these should be treated by businesses when they fall above and below current export thresholds.
- Luggage storage sites, including examples of the full breakdown of upfront costs, charges and transparency about insurance coverage, and extra luggage and seat selection on flights, our work highlights the significant detriment current practices are causing, so it is important examples are given to clarify these issues and facilitate enforcement.
- Clarity on delivery fees: In relation to mandatory delivery charges, your December 2024 consultation on the CMA207 guidance contained a paragraph which stated *'In addition, charges should not be excluded from the headline price if consumers could in theory avoid them but doing so is not viable in practice. This includes, for example, delivery fees where a collection option is notionally available, but a product cannot be feasibly collected by other means, for example because a trader has a very limited number of physical stores located only in certain parts of the country yet advertises products to consumers across the UK.'* This paragraph wasn't included in the final guidance, but we believe it contains a sensible and common sense position which it would be helpful to include in this guidance.

**Q6. Do you have any comments on the illustrative examples provided in the Draft Guidance? Are there any areas where you think additional examples could usefully be reflected in the Draft Guidance?**

We find the guidance generally clear and well-structured. Nevertheless, we believe there are opportunities to strengthen its impact through the following enhancements:

- Visual aids for clarity: Including additional flowcharts would significantly improve comprehension. These visual tools can distil complex regulatory concepts into digestible steps, making the guidance more accessible for both enforcement bodies and businesses navigating compliance.
- Expanded examples of multi-party supply chains: The guidance would benefit from more detailed examples that reflect the complexity of modern supply and distribution chains, particularly in digital commerce. Increasingly, consumers interact with platforms that host multiple sellers, such as online marketplaces, comparison sites, or apps that aggregate services. In these cases, the lines of responsibility between the platform, the third-party seller, and any intermediaries can become blurred. For instance, when a consumer purchases a product from a third-party seller via an online marketplace, who is responsible for ensuring that pricing information is accurate and transparent? If the price changes during checkout, or if additional fees are added late in the process, it's essential to clarify which party bears the legal obligation to present the final price clearly. Similarly, in cases where a platform facilitates dynamic pricing based on user data, but the transaction is fulfilled by a separate seller, the guidance should specify how consumer law applies across

these entities. Including such examples would help businesses better understand their roles and responsibilities, especially in environments where pricing decisions and consumer interactions are distributed across multiple actors. It would also assist enforcement bodies in identifying where accountability lies in cases of misleading pricing practices.

**Q7. Do you have any other comments on topics not covered by the specific questions above?**

- Our recent research indicates that, despite the introduction of new legislation on 'drip pricing' in April, many hotel and travel websites continue to disregard these rules, leaving consumers exposed to substantial hidden fees at the final stages of booking. We remain concerned that several major players in the travel sector are still failing to comply with the requirements set out in the DMCC Act, even after we formally raised these issues with them several months ago. A significant number of travel companies persist in adding administrative and booking fees at the end of transactions, undermining the intent of the legislation.
- Whilst the guidance clearly applies to traders based in and selling within the UK, it is important to acknowledge that UK consumers frequently purchase products and services from companies and websites based overseas. These cross-border transactions raise additional concerns around price transparency, particularly where mandatory import fees, taxes, or handling charges are not clearly disclosed upfront. We believe the guidance would benefit from explicitly addressing how these international practices intersect with UK consumer protection standards and clarifying expectations for overseas traders targeting UK consumers. This would help ensure consistent transparency and reduce the risk of unexpected costs for consumers engaging in global e-commerce.

## About Which?

Which? is the UK's consumer champion, here to make life simpler, fairer and safer for everyone. Our research gets to the heart of consumer issues, our advice is impartial, and our rigorous product tests lead to expert recommendations. We're the independent consumer voice that works with politicians and lawmakers, investigates, holds businesses to account and makes change happen. As an organisation we're not for profit and all for making consumers more powerful.

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