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From: James Macbeth
Project Director

10 June 2016

Short-Term Car Rental – Achieving Compliance with UK Consumer Protection Law

Dear

We are writing to you following the roundtable workshop you attended at the Competition and Market Authority's (CMA) office earlier in the year on achieving compliance with UK consumer protection law. At the roundtables, a number of questions were raised regarding the best way to implement the changes that the CMA requires of metasearch providers and brokers across the sector. We have thought carefully about the points raised at the roundtables and, in light of these, revisited what the CMA requires of you to ensure your business is compliant with consumer protection law. This has taken a little longer than we initially anticipated and we are grateful for your patience while we finalised our position.

We have identified your business as a metasearch provider which we distinguish from brokers in that brokers typically take a booking (or allow the consumer to make a reservation) whereas metasearch providers typically only allow a consumer to search for deals before being passed on to a broker or rental provider to make the booking. We therefore require different changes by each type of business.

We have decided to focus our attention on just three key areas where we want metasearch providers to ensure that they meet our requirements. This reduces the total number of changes that we require compared with the position set out at the roundtables and, perhaps more importantly, focuses on areas where in most

instances the information necessary to address our concerns is already in brokers' possession and therefore should be available to metasearch providers also. We have been particularly mindful of the point raised at the roundtables that brokers and metasearch providers must have access to the information in order to make changes and have reviewed again the websites to assess whether the key information is available. In the large majority of cases we have found that key information is already available to brokers and therefore should be available to metasearch providers. The three areas in respect of which we have particular requirements are:

- Young driver surcharges
- One way fees
- Fuel charges

With respect to each of these areas we require any mandatory charges to be included in the headline price. At the roundtables, some attendees expressed concern that the amount of additional information the CMA required to be shown to consumers would clutter up the consumer's experience of online booking. We are mindful of this and you will see that by reducing the requirements the additional information required can be combined into a single headline price.

The CMA has also written to brokers noting that they generally have the necessary information but just need to present it more clearly and more prominently. The CMA has asked brokers to make a more extensive range of changes that also cover:

- Excesses
- Pre-authorisations or deposits
- CDW exclusions
- Warnings about the need for snow chains and no guarantees for optional extras

Annexe A to this letter sets out the CMA's view on achieving compliance with consumer law in each of the three key areas where we want metasearch providers to review their practices and, if necessary, make changes. Annexe B is a summary of the relevant law.

If you comply with these standards the CMA is less likely to prioritise enforcement action against you, although you should understand that the CMA's prioritisation decision does not bind third parties (including Trading Standards Services). As with all businesses, you are ultimately responsible for ensuring your business is compliant with consumer law: the information in this letter is intended to be a helpful guide to compliance but cannot and does not cover every possible eventuality.

We welcome the willingness expressed at the roundtables to make the necessary changes to achieve compliance with consumer protection law. From a recent review of websites we have seen that a number of brokers have started to make changes and that a number of websites now include the young driver's surcharge and one way fees in the headline price. It should be possible for that aggregated price to be passed on to metasearch providers.

The CMA is allowing a period of several months until 1 January 2017 to give you time to make any changes that are necessary (we have given brokers the same timescale). Some businesses have already started to make the necessary changes and we welcome this action. Starting in early 2017, we will review the market for compliance. If we consider that companies are not complying with consumer law we and Trading Standards Services have powers to take enforcement action. You should review your website and confirm to the CMA in writing when you have made the necessary changes, if any.

We intend to announce publicly that we have written to the broker and meta-search industry to advise it of how to comply with consumer law, that we expect businesses to review their practices and make any necessary changes, and that we will undertake a compliance review in early 2017. We will not name individual businesses. I anticipate that we will issue that announcement in the week commencing 27 June.

In the meantime, should you have any questions regarding this matter please do not hesitate to contact either myself or the Assistant Project Director, Sue Aspinall: James Macbeth (james.macbeth@cma.gsi.gov.uk; 020 3738 6958) or the Assistant Project Director, Sue Aspinall (sue.aspinall@cma.gsi.gov.uk; 020 3738 6788).

Yours sincerely

James Macbeth
Project Director
Competition and Markets Authority

Annexe A - Key principles for you to apply to help achieve compliance with UK consumer protection law, meet best practice, and ensure that the market works well for consumers.

Mandatory Charges (Fuel surcharges, YDS and one-way fees)

To provide clarity on how to present prices to consumers in a compliant manner, the CMA recognises that it may be necessary to show the same consumer different prices at different stages of the booking process. The CMA considers that in a compliant booking process there are likely to be two prices with which the consumer will be presented:

- An initial **headline price** which is shown to the consumer at the start of their booking journey when they enter their intended location and proposed dates. This price will typically exclude any optional extras the consumer might purchase but must include all the mandatory charges.
- A **final drive away price**, that must include all the mandatory and optional charges associated with the rental.

We use the terms '**headline price**' and '**final drive away price**' as defined above in this document.

- All unavoidable and foreseeable charges (mandatory charges) paid by all consumers should be included in the headline price quoted to consumers, and not just in the reservation price at the end of the booking process or at the rental desk. The most common of these charges is a refuelling surcharge that is unavoidable with certain fuel policies.
- Charges that are mandatory for a certain group of consumers (mainly age-related surcharges and one-way fees) should also be included in the headline price quoted to consumers. This may require you to change your booking process so that the appropriate information (i.e. the driver's age and whether the rental car is to be returned to the pick-up location) is obtained from the customer before the headline price is returned.
- The final drive away price provided to consumers at the end of the booking process should include all mandatory charges as well as the charges for any additional optional products.

Prices in local currency

- Charges quoted in local currency and payable at the desk should be presented to the consumer alongside any prices that are in sterling when the consumer is

shown both the headline price and the final drive away price (e.g. Total price: £100 payable now, €100 payable in local currency at pick-up).

- Where charges payable at the desk are quoted as a range you should add that range to the headline price (e.g. a €100 fixed charge for one-way fee plus a charge of €20 - €40 should be quoted as a headline price of €120 - €140).

How should this information be displayed?

The key requirement is that the information is clear and prominent. For information related to mandatory prices this means putting the information in the headline price. You may wish to draw attention to the fact that your headline prices include these items if that is helpful for your marketing.

Annexe B

Relevant UK consumer protection legislation

All businesses are required to comply with consumer protection legislation. Below are the applicable laws most relevant to car rental brokers.

The Consumer Protection from Unfair Trading Regulations 2008 (CPRs).

Part 2 & Schedule 2, Consumer Rights Act 2015, Unfair Terms (CRA).

The Consumer Contracts (Information, Cancellation & Additional Charges) Regulations 2013 (CCCRs).

Transparency of prices

Consumers need to know the price upfront when booking and/or renting and if possible the most comprehensive price (i.e. including all compulsory and optional charges). Consumers cannot be put in a situation where they may have little option other than to accept additional charges and a higher final price at the rental desk than the price they envisaged at the start of the booking process. This may be because mandatory charges are only revealed at the rental desk and/or some options are only available at the rental desk and their price not displayed beforehand. Mandatory charges, such as full fuel tank, premium location pick up fees, one-way fees and young driver surcharges, cannot be excluded from the headline price and only revealed later during the booking process or at the rental desk. Mandatory charges cannot be presented to the consumer as being optional, for example in relation to safety equipment such as snow tyres/chains.

The relevant parts of the applicable legislation are briefly summarised for your convenience below.

Mandatory charges

Regulation 3(3) CPRs: presenting mandatory and/or legal obligations on vehicle equipment as options is a commercial practice contrary to the requirements of professional diligence.

Regulation 5(2) CPRs: presenting mandatory charges as options is a commercial practice that is misleading with regard to the price, or the manner in which the price is calculated if it causes the average consumer to take a transactional decision that they would otherwise not take.

Regulation 6(1) & 6(4) CPRs: presenting mandatory charges as options is a

commercial practice that is misleading if it omits material information that the average consumer needs or if such material information is hidden, provided in an unclear, unintelligible, ambiguous or untimely manner such that it causes the average consumer to take a transactional decision that they would otherwise not take.

Regulation 9 CCCRs & Schedule 1 paragraph c: with respect to a contract that has been concluded at the business' office it is a breach to fail beforehand to provide, in a clear and comprehensible manner, information as to the total price of the goods or services inclusive of taxes, or where the nature of the goods or services is such that the price cannot reasonably be calculated in advance, the manner in which the price is to be calculated.

Regulation 10(1) & 13(1) CCCRs and Schedule 2 paragraph f: with respect to a contract that has been concluded at a distance or not on business premises it is a breach to fail beforehand to provide, in a clear and comprehensible manner, information as to the total price of the goods or services inclusive of taxes, or where the nature of the goods or services is such that the price cannot reasonably be calculated in advance, the manner in which the price is to be calculated.

Transparency and clarity on fuel policies and charges

Regulation 5(2) CPRs: with respect to the clarity of fuel policies and associated charges a commercial practice is misleading with regard to the price, or the manner in which the price is calculated if it causes the average consumer to take a transactional decision that they would otherwise not take.

Regulation 6(1) & 6(4) CPRs: with respect to clarity of fuel policies and associated charges a commercial practice is misleading if it omits material information that the average consumer needs or if material information is hidden or provided in an unclear, unintelligible, ambiguous or untimely manner such that it causes the average consumer to take a transactional decision that they would otherwise not take.

CRA Schedule 2, Part 1 paragraph 10: a lack of clarity around terms relating to fuel policies and associated charges is likely to have the object or effect of irrevocably binding the consumer to terms which they have no real opportunity of becoming acquainted with before the conclusion of the contract.

Regulation 9 CCCRs & Schedule 1 paragraph c: with respect to a contract that has been concluded at the business' premises, it is a breach to fail beforehand to provide, in a clear and comprehensible manner, information as to the total price of

the goods or services inclusive of taxes, or where the nature of the goods or services is such that the price cannot reasonably be calculated in advance, the manner in which the price is to be calculated.

Regulation 10(1) & 13(1) CCRs and Schedule 2 paragraph f: with respect to a contract that has been concluded at a distance or not on business premises it is a breach to fail beforehand to provide, in a clear and comprehensible manner, information as to the total price of the goods or services inclusive of taxes, or where the nature of the goods or services is such that the price cannot reasonably be calculated in advance, the manner in which the price is to be calculated.