

ABTA Submission

CMA: Unfair commercial practices guidance

Introduction

ABTA is the largest travel association in the UK, representing around 3,900 consumer brands. ABTA members range from small, specialist tour operators and independent travel agencies specialising in business and leisure travel to publicly listed companies and household names, from call centres to internet booking services, and from high street retailers to homeworking travel agents. ABTA members have an annual combined turnover of more than £40 billion, comprising consumer and business travel expenditure.

ABTA welcomes the opportunity to comment on the CMA's Draft Guidance on Unfair Commercial Practices. ABTA's comments focus primarily on the suggestion to include "local taxes and other fees that become payable on arrival at hotels or on departure at an airport." in the headline price. ABTA believes that excluding local taxes and similar fees from paragraph 9.19 aligns with the principles of transparency and consumer protection without misleading or burdening consumers with inaccurate information. At the same time, we support the requirement to prominently display all relevant details where parts of the price cannot reasonably be calculated in advance.

Consultation questions:

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 Do you have any comments on the structure or clarity of the Draft Guidance?

Q2. Do you have any comments on the illustrative examples of commercial practices applying the prohibitions? Are there any areas where you think additional examples could usefully be reflected in the Draft Guidance?

Q3. Do you have any comments on the Draft Guidance on the 'drip pricing' provisions in the DMCC Act (found in the 'Material pricing information' section of Chapter 9 of the Draft Guidance), including the illustrative examples? In particular, are there any specific pricing practices that have not been included in the 'drip pricing' illustrative examples which you think it would be helpful to include, and if so, what should such further guidance specifically cover?

1. Local taxes

ABTA notes that in section 9.19 at point (d) it gives the following as mandatory charges that must be included in headline prices: "local taxes and other fees that become payable on arrival at hotels or on departure at an airport".

Currently, ABTA members provide price details in accordance with ABTA guidance and the Package Travel and Linked Travel Arrangements Regulations 2018. Mandatory charges that can reasonably be calculated in advance are included in prices. Additional amounts paid locally in local currency are dealt with by the provision of clear information to customers that these taxes must be paid in resort and how much they will be in the local currency. These are amounts that must be paid in local currency to the accommodation and are not paid when booking the holiday. It is important that the client knows that they must be able to pay when in resort, and be prepared with the required amount of local currency. Customers are required to confirm that they have read and understood this information prior to completing their booking.

It is important to emphasise that this is not an area in which ABTA, or its members, receive consumer complaints. As such, ABTA contends that this provision is unnecessary and, for the further reasons set out below, should be removed from the guidance.

ABTA and its members have identified several fundamental difficulties with the CMA's proposed guidance, including:

- To put local taxes into headline prices would mean converting the tax into Sterling and combining it with the tour operator's price for the package. The amount quoted cannot be expected to be accurate at the time of payment in resort as the exchange rate will fluctuate. Holiday customers generally see prices a long way in advance of taking the holiday (and paying the tax).
- Local taxes are subject to change by the local authorities, therefore the price given could be inaccurate. Again, holidays are often purchased well in advance.
- ABTA believes that attempting to include these amounts in headline prices is likely to make those prices confusing to consumers. The price will be misleading due to the above inaccuracies, but also because it includes amounts not paid to the tour operator. The client could believe that the local taxes have been collected and paid, when in fact they will be asked to pay at the hotel.
- If non-Sterling estimated amounts are included, businesses will have to very carefully explain that these prices are estimated, converted from another currency, and inaccurate. This is a significant disclaimer to make about a price and one that ABTA's members would not be comfortable doing. In fact, it is only a small part of the overall price (the local tax) that is estimated.
 - This explanation will also need to clarify that part of the advertised cost, which is not charged directly to the customer by the tour operator, will be deducted from the headline price at the point of payment. The disclaimer will also need to say that the local tax must be paid to the accommodation. This will inevitably cause confusion at critical points in the booking process.
 - Further, ABTA's members question if confusion will be caused due to businesses applying the guidance differently and as a result price displays would be difficult to compare and be misleading.
 - Further concerns on this point include whether there is space for these disclaimers and how that could be found on website displays and other price displays, as well as the time and cost of technical changes required within tour operator systems to display the necessary disclaimers
- In addition, tour operators enter into contracts with hotels a long time in advance. The pricing is often static rather than dynamic and prices are loaded into the tour operator's system. This would make it very difficult to display an accurate price that included external amounts that change, like local taxes.

Overall, customers are best served by being provided with information on the amount of these taxes clearly and prominently along with the tour operator's price. Customers can calculate what they'll be required to pay. There is a clear split between the amount taken by a tour operator and the amount

due to a third party. This system is not causing problems for consumers, and it is achievable by businesses.

ABTA believes that tourist taxes should be dealt with under the exception provided for in the DMCC Act: where part of the price can't be reasonably calculated in advance. For foreign holidays, this is true due to the nature of the product: there are additional amounts to be paid, in a foreign currency, only paid when service is performed some time in future, and the amount is not paid to the trader but to a third party. Holiday companies can't accurately calculate part of the total price in advance.

In the parts of the draft guidance that deal with this issue, ABTA notes that section 9.24 uses the word "impossible" which is an inaccurate reflection of the DMCC Act which states 'can't reasonably be calculated in advance'.

9.24 should therefore be revised, to take account of more situations where it *isn't reasonable* to expect advance calculation.

ABTA suggests:

"Whether the total price of a product can reasonably be calculated in advance is an objective question which requires an assessment of whether there is anything about the product that means the price or any part of it can't reasonably be calculated in advance. If it can be accurately calculated in advance and it's reasonable to do so and display the total price, this must be done. If it can be accurately calculated in advance, but the trader chooses not to do so, or has structured their pricing so it is hard to calculate, this will not be 'reasonable' and the relevant mandatory charges should be included in the headline price."

ABTA members have also noted that local taxes have been classified as charges that customers will necessarily incur for pricing purposes, whereas other charges have not, creating significant inconsistencies and challenges.

Moreover, during the CMA UCP Webinar on 8 January this year, an example was given of traders selling new/used cars. A question was asked whether those traders advertising the price of a car needed to include the cost of vehicle tax or ULEZ charges in the headline price. The CMA indicated that they did not consider this to be an example of 'drip pricing', but instead viewed this in the context of 'misleading omissions'. The important requirement was to ensure the consumer was made aware of the tax and that information was available to the consumer to calculate before making the purchase of a car.

ABTA fails to understand why a different approach appears to be required of travel companies selling holidays/hotels. It is even more complex to include in headline prices costs payable to third parties in local currencies. There is no discernible difference between the car tax example, above, and the hotel tax example – yet, the CMA appear to view the hotel tax as a 'drip price' for no apparent reason. ABTA does not agree with this assessment.

Other payments made to third parties could also be deemed necessary to be able to take up the service - such as the cost of a passport or visa (although recognising that such formalities might not be required for all travellers). It isn't right that these amounts be added to the tour operator's price for the holiday.

If the guidance remains as it is, members are concerned about the level of system changes needed to comply. Complex technical changes will be required, which will be costly and time-consuming. The local taxes differ between countries, regions and cities. They may differ in various ways – a charge per person, or per night, or per room, or as a percentage of the accommodation cost or vary by hotel rating or child age. There is no uniform way the taxes are levied therefore adding even more complexity to calculating the correct amount to include in the headline price.

Further, if the guidance remains as it is, there are concerns over how a level playing field can be maintained. If some businesses change their prices but some do not there will be price differences leading to a significant competitive disadvantage. This must be avoided. The leisure travel market is highly price competitive.

In addition, many online providers are not based in the UK. If UK-based players implement these changes while overseas competitors do not, it could place UK-based operators at a significant competitive disadvantage. As such, questions arise about how the CMA would ensure compliance in this scenario.

ABTA's members have also raised concerns that the CMA does not seem to focus on companies selling package holidays illegally. Members believe that the CMA should allocate more resources to ensure full compliance with all applicable package travel regulations across the board, rather than increasing the administrative burden for legitimate businesses. The priority should be to act against those who violate the rules and undermine the long-term sustainability of the UK's travel industry.

If the guidance is to remain as it is, which ABTA would strongly argue against, a significant lead-in time would be required to allow the necessary systems changes to be put in place. Action should also be taken to ensure that all companies within the scope of the guidance, including those established outside the UK but selling to UK consumers, comply with the requirements from the stated implementation date.

2. Other points on pricing

Individual members have also raised the following concerns regarding pricing practices:

- Given online consumer behaviour, concise information is crucial for quick purchasing decisions. There isn't enough space to include the level of detail in off-platform marketing, that would be required to explain how the price was calculated if such fees are required to be included in the headline price. So, traders require clarity on how 'material' these fees are. An estimated reference price may be acceptable, but traders need confirmation that this is sufficient. Traders must act responsibly and highlight exclusions in longer-format communications.
- For traders selling package holidays that include flights, but do not operate as flight providers, there's no way to determine final taxes, fees, or charges in advance. These can lead to variations between quotes and the final price, though generally minor. Some low-cost airlines may adjust fares after quotes, often requiring price adjustments. Transport providers should offer clearer pricing information.
- The guidance on displaying the total price, including mandatory fees, poses challenges for the travel industry, where per-person, per-night pricing is preferred. Space limitations in

marketing touchpoints make it difficult to provide both the total price and a per-person breakdown. Confirming that per-person and per-night prices can be included, with the total price easily accessible, would be helpful.

- Clarification is needed on additional charges. For example, in travel, traders selling package holidays to the US may not sell items like travel insurance or visas, making it difficult to assess if these are required for specific consumers. These items could fall into the definition of 'additional charges,' but traders don't control or sell them directly.
- The same applies to third-party charges like extra baggage or seat allocations. Traders selling flights can't guarantee these services will be required by all consumers. The definition of 'mandatory' should be limited to fees sold by the trader, with clear exclusions for third-party products.
- Charges that aren't mandatory but can be added by default, like gratuities on all-inclusive holidays, also need clarification. It's impossible to calculate these charges in advance, so traders should be able to state them in terms, making them accessible upon further inquiry.
- The removal of the 'material' test has created confusion. For complex travel products, like package holidays, it's unrealistic to present every detail in short-form communications. Traders should indicate a headline price with an indicative value, with all material information accessible via a click-through. ABTA members also asked for clarity around "headline price" - is this anywhere that a price appears or only at the point that the customer receives a quote?
- The cruise example in the guidelines, which requires traders to include mandatory charges in the headline price, presents issues. Traders should be able to present indicative prices that are representative of the package advertised, with clear options during booking.
- Traders need more guidance on providing fixed total pricing for package holidays. Clarity is needed on what constitutes a 'realistic, meaningful, and attainable' indicative price. Traders could use reference prices that reflect typical trip costs, excluding extras like travel insurance and ESTA fees.
- CMA's investigations into dark patterns create confusion. Traders must balance simplifying marketing while providing sufficient detail, which increases the risk of misleading consumers.

Q4. Do you have any comments on the Draft Guidance on the banned practice relating to fake consumer reviews (found in Annex B to the Draft Guidance)?

ABTA would raise concerns regarding the obligations placed on traders or tour operators if they are deemed a "publisher" of review information from a review provider.

For example, when displaying the hotel element of a holiday, ABTA members might include: "This hotel has a Trip Advisor rating of 4.0/5 based on 5543 reviews", with the Trip Advisor logo, making clear this is Trip Advisor's content.

It appears that the concept of a "publisher" is broad, e.g. anyone that allows access to consumer reviews. Our members question whether they would be "publishers" with respect to Trip Advisor, or other third-party, content. They point out that they will not have any control over how the review is obtained, verified or managed. They will also not have access to the personal data of customers

which may have been collected by the review platform and will not be able to perform any due diligence to identify any errors or inaccuracies or be able to identify a fake review.

ABTA and its members are concerned about potentially being responsible in such cases and feel that the guidance does not make clear what the position is.

It should be clearer that compliance is required by the ‘publisher’ actually receiving and managing the reviews (e.g. Trip Advisor) and that third-party companies referencing these reviews cannot, and therefore are not expected to be able to, take the same steps. ABTA’s members rely on a third-party review platform in good faith and do not want to be in danger of being penalised through no fault of their own.

Further guidance might be provided on businesses having a contract with the review provider that includes assurances of legal compliance. Additionally, clarification might be given on what the position would be if a business is unable to secure such a contract due to commercial negotiations.

Q5. Do you have any other comments on topics not covered by the specific questions above? If so, the CMA requests that respondents structure their responses to separate out their views in relation to each of the Draft Guidance’s chapters.

An ABTA member commented that in relation to the “Invitation to purchase” (examples in section 9.7 of the guidance and associated information which must be given as detailed in section 230(2) of the DMCC), it would be helpful for further information or examples to be given on what would be considered acceptable in situations where space is limited (such as social media or online adverts). For example, it would appear that it should be acceptable in those circumstances to link to the additional information – it does refer to Section 7 of the guidance, but examples would be useful.

Secondly, an ABTA member has raised concerns about a requirement from the CMA that traders must not sell more during price promotion periods than outside those periods. While it is feasible for traders to implement a requirement that a reference price must be established for a longer period than the promotional price, certain industries, such as travel, have consumer expectations that promotions will occur during specific times of the year. Traders cannot be expected to restrict the availability of these promotions, as doing so would limit the number of trips available at that price, which could result in unmet consumer demand.

There is naturally going to be a spike in sales during promotion periods, which serves both the commercial goal of the trader, through increased sales, and benefits consumers by offering lower-cost holidays.

Clarity is needed in the guidelines that a reference price must be established for a sufficient length of time before a promotional price is offered, but there should be no restriction on the quantity sold at the promotional price for that limited promotional period. Many holidays, by their nature, are not prearranged products where quantities can be predetermined. Many packages are formed based on individual selections by travellers, and it is only at the time of booking that the exact package is determined. Therefore, traders are often unable to control in advance the number of products advertised in a promotion that will be sold. If they had to manage that control at the time of booking, it might lead to turning down sales, which would ultimately disadvantage consumers.