

Dear Sirs

I understand that [Section 230\(2\) of the Digital Markets, Competition and Consumers Act 2024](#) will outlaw the automatic addition of percentages on top of published prices, given that “*the total price of the product*” (wording of paragraph b) including any automatically-added percentage could “*reasonably be calculated in advance*” (wording of paragraph c) when drafting an invitation to purchase.

An increasing number of UK restaurants, particularly in London, automatically add a percentage of typically 12.5% on top of their menu prices. For example, if a restaurant will ask a consumer to pay a total price of £19.11 for a dish, then instead of showing £19.11 in the menu, it shows a misleading price of £16.99 with small print about an additional 12.5% so-called “*service charge*”, which is often misleadingly described as optional or discretionary.

Diners focus on headline prices without taking the time to calculate an additional percentage on top of each price. This causes a misleading indication of price, which is one of the most deceptive commercial malpractices against consumers. Its effect is to distort competition by making a service look cheaper than reality and thereby disingenuously entice a consumer into a decision to buy a service at a lower price than the consumer will ultimately be asked to pay. Within Europe, this malpractice by restaurants is unique to parts of the United Kingdom and of Italy.

Even if an automatically-added percentage is purportedly optional or discretionary, restaurants automatically add it to the bill without first seeking diners’ consent. Restaurants coerce diners into paying it as follows:

1. Although most diners would feel comfortable in passively not opting into an additional service charge, most diners feel socially awkward actively asking for it to be removed from the bill, particularly if they are dining in a group of friends or colleagues. For example, if a restaurant bill is to be split equally between a group of diners, but one or more individual diners wishes to opt out of an additional service charge, then it becomes socially and mathematically awkward to remove it from the bill, with the result that diners are coerced into paying it against their wishes.
2. Many restaurants have a policy of delaying diners’ departure if they do not wish to pay a service charge, for example by requesting a manager’s intervention and/or by taking away the bill for several minutes to reprint it with the service charge removed.
3. An increasing number of restaurants helpfully allow the bill to be paid online, often by scanning a QR code, entering a table number and using Apple Pay or Google Pay, which can save several minutes in both requesting and paying the

bill. However, these restaurants typically accept payment by this method only for the full amount of the bill including any purportedly optional service charge.

4. Some restaurant staff make comments to make diners feel remorseful for removing a service charge, despite the menu stating that it is optional or discretionary.
5. Some restaurants do not even mention their service charge on their menus at all. For example, Wahaca's printed menu, which is also published online at [https://www.wahaca.co.uk/wp-content/uploads/2024/10/0202\\_WAH\\_Main\\_Estate\\_Table\\_Menu\\_Winter\\_24\\_CALORIE\\_WEB.pdf](https://www.wahaca.co.uk/wp-content/uploads/2024/10/0202_WAH_Main_Estate_Table_Menu_Winter_24_CALORIE_WEB.pdf), has no mention of any service charge, yet Wahaca's restaurants automatically add a 12.5% service charge to bills without seeking diners' consent. When diners challenge Wahaca's service charge, issues 2 and 4 above occur.

In view of these coercive and obstructive issues, whenever a percentage is automatically added to a restaurant bill without the consumer's express consent whereby the consumer did not explicitly opt in, it is arguably not genuinely optional or discretionary, and should therefore fall within scope of the "*the total price of the product*" in [Section 230\(2\)\(b\) of the Digital Markets, Competition and Consumers Act 2024](#).

Paragraph 9.19(c) of the CMA's draft guidance at [https://assets.publishing.service.gov.uk/media/67585aa88a1ef8f66413b9a0/\\_Draft\\_guidance\\_.pdf](https://assets.publishing.service.gov.uk/media/67585aa88a1ef8f66413b9a0/_Draft_guidance_.pdf) cites "*mandatory cover or service charges at a restaurant*" as an example of mandatory charges that must be included in the total price of a product in an invitation to purchase. I argue that all automatically-added charges should be included in this example, given the obstacles that diners face in avoiding paying them.

In the context of restaurants, there are two possible interpretations of "*the total price of the product*" in [Section 230\(2\)\(b\) of the Digital Markets, Competition and Consumers Act 2024](#):

- A. The total price that the consumer will be billed or asked to pay (which includes any automatically-added percentage); or
- B. The lesser price that the consumer is contractually bound to pay (which excludes any automatically-added percentage).

I believe that interpretation A should apply, because this is the default total price that most consumers ultimately pay. If a restaurant automatically adds a percentage that is purportedly optional or discretionary, then it nevertheless forms part of the "*the total price of the product*" that the bill will ask the consumer to pay. Therefore in order to comply with [Section 230\(2\) of the Digital Markets, Competition and Consumers Act](#)

[2024](#), any percentage that is added automatically, irrespective of whether it is mandatory or optional, ought to be included within the total price of each product in a menu.

These so-called “*service charges*” are not gratuities or tips, because their amounts are determined by restaurants and they are added to restaurant bills without diners’ express consent. The amount of a gratuity or tip is determined by a diner and it is added voluntarily by a diner, not automatically by a restaurant.

Semantically, if a percentage is automatically added to “*the total price of the product*”, then that price is no longer a total price.

The entirety of a restaurant meal is a service, as opposed to a sale of goods, not least given that any goods used in provision of the service are consumed as part of the service while on the premises. Therefore the entirety of a restaurant bill is a charge for a service. By describing an additional percentage as a “*service charge*”, restaurants mislead consumers that menu prices are not for the service and that the only remedy in respect of a deficiency in the service is to remove the “*service charge*” from the bill, whereas in fact consumers could be entitled to a greater price reduction under [Section 56 of the Consumer Rights Act 2015](#) or repeat performance under [Section 55 of the Consumer Rights Act 2015](#).

Additional percentages on top of menu prices cause a detriment not only to consumers. Restaurants avoid a VAT liability and sometimes National Insurance on additional percentages that are purportedly optional or discretionary, thereby depriving the Exchequer of revenue.

For all of the above reasons, I would be grateful if the CMA's guidance on [Part 4 of the Digital Markets, Competition and Consumers Act 2024](#) could instruct restaurants to show in their menus the total prices of each product that the consumer will be asked to pay (inclusive of any additional percentages), and eliminate the increasing malpractice of automatically-added percentages on top of published prices, whether compulsory or purportedly optional.