Non-Confidential

CMA Consultation on draft guidance on unfair commercial practices

BT Group response

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BT Group

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Executive Summary

Regulation should be appropriate and proportionate to any consumer harm identified.

Whilst we understand the CMA's general concerns with respect to the practice of 'drip pricing', the application of the proposed requirement in paragraph 9.17 of the draft guidance to provide a 'total price' (i.e. the cost to the consumer over the course of a fixed term) in the telecoms sector will have unintended and detrimental consequences for consumers and providers:

- **It will lead to consumer confusion** and is unlikely to provide any material benefit. Customers already see extensive and detailed pricing information. Requiring presentation of 'total price' over the course of the contract risks making it more difficult to understand what they will be paying and to compare and choose products with varying contract lengths.
- **It will create an inappropriate and disproportionate regulatory burden on telecoms providers, which risks stymying growth in this sector.** Regulation from Ofcom, the FCA and the ASA already governs what we tell consumers in advertising. We are further required by Ofcom and the FCA to provide significant amounts of information to customers before purchase, similar to, but more extensive than, the pre-contract information for subscriptions that will be required under later phases of the Digital Markets, Competition and Consumers Act ('DMCCA'). This includes very-recently-introduced Ofcom regulation on how providers should present any mid-contract price rises. Such a requirement will therefore drive significant additional compliance costs and unnecessarily disrupt well-established marketing practices in what is a highly competitive and highly regulated sector.
- **It is unnecessary to achieve the CMA's goal.** Existing regulation of telecoms services already addresses the risk of drip pricing and ensures that consumers are able to compare services, armed with all the information they need to make good choices. We are not aware of any research or insight demonstrating that consumers are harmed by how the telecoms sector currently presents pricing for its products/services on a monthly basis, nor that they would benefit from seeing a 'total price' as envisaged by the draft guidance.

In order to avoid these outcomes and the resulting adverse impacts on competition and economic growth, we urge the CMA to:

- limit the application of the 'total price' provisions in the guidance to genuine drip pricing (as was envisaged during the consultation process for the DMCCA)[1]; and/or
- exclude the highly-regulated telecoms sector from any requirement to provide a 'total price' incurred over the course of the contract as envisaged by the draft guidance.

Responses to relevant consultation questions

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

See our response to Question 5 below.

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?

It would be helpful if the CMA could provide additional examples addressing more borderline cases which would provide businesses with a better understanding of how the CMA interprets the DMCCA and how companies can ensure compliance. We would welcome illustrations of, for example, 'reasonable and proportionate' steps to demonstrate compliance with the DMCCA. For drip pricing, more illustrative examples on what the CMA interprets to be 'clear' and 'prominent' would be helpful. Lastly where the CMA illustrates examples of where it may not be possible to calculate the total price, it would be helpful if the CMA could provide additional examples that could be defined as "impossible reasonably" to calculate, as the examples provided (eg. portrait photography) illustrate situations where calculation of each price component is relatively straightforward.

Q3. Do you have any comments on the Draft Guidance on the 'drip pricing' provisions in the DMCCA (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?

See our response to Question 5 below.

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)?

We welcome the focus on fake reviews in the guidance. However, we have concerns around third-party review platforms that offer paid premium memberships, providing

[1] Government response to consultation on 'Smarter Regulation: Improving consumer price transparency and product information for consumers'

businesses with the opportunity to influence the way reviews are presented on that platform.

Even where all reviews provided on these platforms are genuine, only those companies with paid memberships can influence their rating on the platform, and this is not disclosed to the customer. We are concerned that this creates a misleading impression of the relative performance of the businesses on these platforms.

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.

We are greatly concerned about the requirement in paragraph 9.17 of the draft guidance to include a total price in invitations to purchase for fixed term contracts, i.e. the requirement to provide the cost that the consumer will necessarily incur over the course of a contract for the purchase of a product over a fixed period.

The wording 'total price' was inserted in section 230 of the DMCCA to combat drip pricing. It was not intended to be extended in the way the CMA sets out at para 9.17 of the draft guidance.

We set out our concerns in more detail below, but first we set out how our contracting model works and how it differs from those described by the CMA in the draft guidance. We would also welcome the opportunity to discuss this in more detail with you in a way that enables you to fully understand how our business operates and the disproportionate impact such an interpretation of the requirement would have:

- Customers contract with us to pay a monthly fee each month for the duration of a minimum term, usually 24 months, in exchange for a monthly service, for example, mobile, broadband and/or TV.
- Under that contract, the customer is bound to pay us monthly. There is no ability for a customer to pay annually, in a one-off lump sum or in any other way.
- All contractual documents and communications clearly set out the monthly fee. Where there are any unavoidable additional costs such as activation or installation fees, those are set out clearly in our advertising. Ofcom regulation already exists to require telecoms providers to provide pre-contract summaries and pre-contract information.[2]
- Customers receive a monthly invoice and payment of that invoice falls due within a few days of receipt. The invoice includes the fee for the following month, plus any extra charges customer has incurred during the previous month, for example premium rate calls.

[2] See Condition C1 in Ofcom's General Conditions of Entitlement: General Conditions of Entitlement - Ofcom.

- At the end of the minimum term, the service contract keeps running as a monthly rolling contract (it doesn't renew on to a new minimum term), until the customer either cancels or upgrades. Customers are reminded of this and informed of their options shortly before the end of the minimum term, in line with Ofcom requirements on end-of-contract notifications.
- The monthly fee increases annually during the minimum term, on 31st March each year. We do this in line with Ofcom regulation. Price increases are necessary to ensure we can continue to invest and innovate to provide a high-quality network. Our costs increase and customers tend to use incrementally more of our services as their contracts progress. Increasing data consumption requires continued investment to ensure sufficient network capacity across our customer base. Mobile contracts increase by £1.50, broadband contracts by £3 and TV contracts by £4. We remind customers in advance of the price rise taking effect.

The concept of 'total price' in the draft guidance should be aligned with section 230 of the DMCCA, with the requirement to provide a total price incurred over the course of the contract limited to drip pricing.

The intention of section 230 of the DMCCA was to prohibit drip pricing. This was the intention of the Department for Business and Trade during the consultation process. As Footnote 5 of the CMA's draft guidance states, drip pricing occurs 'when consumers are shown an initial price for a product and additional fees are introduced (or "dripped") as consumers proceed with a purchase or transaction'. The draft guidance has improperly expanded the interpretation of section 230.

In the telecoms sector, drip pricing refers to the introduction of mandatory fees (such as a mandatory activation fee) only disclosed to the customer after the headline invitation to purchase. Drip pricing does not cover any optional charges that are stated to be applicable at the invitation to purchase but that the consumer may or may not incur during the course of the contract (for example, premium rate calls).

We do not engage in drip-pricing, and it is not market practice in the telecommunications market as existing sectoral regulation effectively prohibits it.[3] As set out above, customers agree to pay us a monthly fee in return for the provision of a service. Where we do have upfront fees that apply to all customers, for example activation fees for broadband or a postage fee for sending the router, these are added together and set out

[3] ASA Pricing Principles published in October 2016 and Ofcom's General Conditions Section C1, including recent comprehensive pricing rules which came into force on 17 January 2025. We set out below why existing regulation is sufficient to ensure pricing is clear to consumers.

alongside the monthly price and the contract length in the body of the advert.[4] It is very clear to customers from any invitation to purchase 1) what that monthly fee will be 2) the minimum term for which they will have to pay that monthly fee for and 3) what any additional charges are. Customers are not surprised during the journey with a minimum term or any fees they were not aware of.

Where the service advertised is subject to an annual price rise, the advertising quotes the new total monthly cost and the date it applies with equal prominence to the initial monthly cost.[5]

Section 230 of the DMCCA does not require that the "total price" be calculated as the amount the consumer will incur over the course of the contract, as indicated in paragraph 9.17 of the draft guidance. Such interpretation conflicts with telecoms industry standards and goes further than is required or was intended, unnecessarily increasing the regulatory burden on telecoms businesses.

The reference to 'total price' in s 230(2)(b) of the DMCCA matches the provisions of the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (the CCRs).[6]

To comply with those 'total price' provisions in the CCRs, we provide customers with the total monthly price they are agreeing to pay, plus any additional fees that are part of the transaction. This is also in line with the ASA's definition of "the total financial commitment" in its 2016 Pricing Principles.[7] During the consultation that preceded the publication of these Principles (which included research into consumer behaviour) the ASA found that consumers were primarily concerned with their outgoings on a monthly basis.

We consider the wording 'total price' in section 230 of the DMCCA should be read in the same way as in the CCRs: any fees that would be added to a core initial price and that

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[4] This requirement follows the ASA's Pricing Principles published in October 2016, which state that advertising should:

Present all compulsory elements of the total financial commitment (up-front costs, ongoing costs and contract length) in close proximity to one another, avoiding undue emphasis on any one element.

[5] As required by the ASA's guidance on the presentation of mid-contract price increases and Ofcom's mid-contract price increase guidance 'General Condition C1 – contract requirements (January 2025)'

[6] Sections 9 (on-premises contracts) and 10 (off-premises contracts) of the CCRs require businesses to make certain information available to customers before they are bound by a contract. Schedules 1 and 2 of the CCRs then set out what that information is. Both schedules refer to the 'total price' as a key piece of information. For completeness it appears in para (c) of Schedule 1 and para (f) of Schedule 2 to the CCRs.

[7] i.e. the ongoing monthly costs and length of the contract, rather than the total cost over the course of the contract

can't be avoided (i.e. true 'drip pricing') should be included to show a total price and avoid misleading customers. But that doesn't stretch to requiring businesses to create a notional total price over the course of the contract.

For these reasons, it is clear that section 230 of the DMCCA was not intended to cover minimum term contracts in the telecommunications sector. However, during the seminar run by the CMA on Thursday 9th January 2025, it was indicated that minimum term telecommunications contracts would fall in scope. It is inappropriate that measures designed to combat drip pricing are extended to situations where businesses do not engage in drip pricing as outlined in this response. Indeed, as outlined below, it will create a disproportionate and undue burden on telecommunications businesses given existing regulations in place that prohibit such practices. The guidance should therefore be amended to clarify that the total price wording in the DMCCA should be interpreted in line with the CCRs.

The impact of the draft guidance is a wholesale change to the current approach to the format in which the telecoms industry presents, and customers understand, the price to be paid for services.

Para 9.17 of the draft guidance states (our emphasis added): "The requirement to include all mandatory charges means that where the invitation to purchase **relates to a contract for the purchase of a product over a fixed period,** the 'total price' advertised by a trader must be the price that the consumer will necessarily incur over the course of the contract. For example, if a trader advertises a £22 per month gym membership for a fixed 6 months' contract, the invitation to purchase should state that the membership costs £132. **The trader may still advertise the monthly price in addition to the total price.**"

As shown above, in our case the service contract is not for 'the purchase of a product over a fixed period', it is for the repeated purchase of a service each month/billing period for a minimum term, and (unlike in the gym example), continues beyond the minimum term until terminated by the consumer

More importantly, the draft guidance that "the trader **may** still advertise the monthly price in addition to the total price" is not correct as regards the telecoms industry. As further set out in detail below, we are already required by regulation to show each of the monthly price, the minimum term and detailed information on in-contract price rises.

During the Department for Business and Trade's consultation phase for the DMCCA, one key policy objective for the removal of drip pricing was to enable easier price comparison across suppliers[8]. An unintended consequence of requiring invitations to purchase in the

[8] DBT Impact Assessment dated 8th September 2023 Measures to address drip pricing - impact assessment

telecoms sector to provide a 'total price' is that price comparison may become more difficult.

We provide contracts with different minimum term lengths that suit different consumer needs. A notional 'total price' as envisaged by the draft guidance would depend on the length of that minimum term: a 30-day rolling plan would show a significantly lower total price than a 24-month minimum term. Consumers are used to comparing the monthly price for their service and all comparison sites are based on this mechanic. To carry out a reliable price comparison where a 'total price' is stated, consumers would have to change their behaviour and actively select a minimum term they are happy with to compare plans of that length. The default lowest price would in all cases be for a 30-day rolling plan. But as set out below such plans may not suit the needs of all consumers and may cost them more in the long term. Effectively, the proposed guidance as drafted risks reducing consumer choice, not increasing it, as consumers will find it harder to compare between terms of varying lengths.

Existing regulation operates well to ensure that consumers have the key information they need and the upfront knowledge of what they will pay. The proposed guidance risks consumer confusion and creates undue regulatory burden and compliance costs on telecommunications providers given existing regulation.

We operate in a highly regulated sector. Ofcom is our principal regulator and where we sell financial service products, we are subject to additional FCA regulation. The additional confusion created by total price requirements would contradict the 'Customer Understanding Outcome' under the FCA's Consumer Principles. As all businesses, we are also subject to the CAP/BCAP Codes under the ASA. The ASA also has additional telecoms-specific rules and guidance which apply to telecommunications providers.

Each of these regulators take consumer choice and the provision of appropriate information to consumers very seriously. Regulation governs how we sell to customers (including invitations to purchase), how we manage customers in-life, and how we manage customers at the end of their minimum terms. There are detailed specific regulations governing how and when we communicate with customers and many of these communications will be deemed invitations to purchase under the DMCCA.

The specific ASA rules and guidance that already apply to our price statements when communicating with customers include:

- the CTSI Guidance for Traders on Pricing Practices;
- the pricing rules within the CAP and BCAP Codes (section 3.17 to 3.22 of the CAP Code and section 3.18 to 3.24 of the BCAP Code);
- the ASA's Pricing Principles;
- Price Claims in Telecommunications Marketing;
- Mid Contract Price Increases;

- Free Claims and Compulsory Charges.

In addition to these ASA rules and guidance documents, there are detailed Ofcom and FCA rules which govern how pricing is presented to consumers in our sector (set out in the Ofcom General Conditions and the FCA's CONC Handbook).

Critically, none of these require us to state the total cost over the course of the contract alongside the monthly price. In its statement Prohibiting inflation-linked price rises Ofcom decided against the option of requiring a 'total price' similar to that suggested by para 9.17 of the draft guidance as consumers would have sufficient clarity and certainty from the monthly prices to enable them to make informed decisions[9].

As indicated above, because of all this, in our case it is not accurate to say as per the last sentence of para 9.17: "The trader **may still advertise** the monthly price in addition to the total price". We are required to advertise the monthly price as well as supply other information. Regulation does not sit in isolation and as a highly regulated sector, lack of clarity between regulators can have a significant impact on consumers as well as businesses. From a practical point of view, customers need to budget for monthly payments, and so the monthly price is of primary importance, whether or not the regulation requires it.

Part 4, Chapter 2 of the DMCCA regarding subscription contracts, which will come into force in Spring 2026, will not apply to certain contracts which would otherwise meet the definition of subscription contract.[10] Contracts regulated by Ofcom and the FCA, amongst other regulators, will therefore be excluded from Part 4, Chapter 2 due to the levels of consumer protection their rules already mandate. We consider a similar approach is necessary here should the CMA not limit the application of the guidance in paragraph 9.17 to drip pricing.

The regulation governing how we communicate with and advertise to consumers is extensive and provides a very high level of consumer protection already. We consider any invitations to purchase that comply with the high level of regulation set down by a sector regulator (e.g. Ofcom or the FCA) would meet the requirements of the DMCCA.

We are also required by Ofcom and/or the FCA to provide certain communications to customers ('regulated communications'). One set of regulated communications is provided during the customer sales journey, before a customer is bound by a contract (Pre-Contract Information and a Contract Summary for the telecoms service and a Pre-Contract Consumer Credit Information document and an Adequate Explanation for any regulated consumer credit element, typically to purchase the mobile device); a second

[9] Paragraph 4.72 of Ofcom Statement on Prohibiting inflation-linked price rises dated 19th July 2024
[10] Certain contracts are excluded either because there are already regulations that apply to these contracts which provide equivalent or higher consumer protection or where there is another relevant public policy reason (guidance to section 253 DMCCA).

set has to be provided shortly before the end of the minimum term (called End of Contract Notifications); and a third set has to be provided annually following the end of a minimum term, should the customer not cancel or upgrade (called Annual Best Tariff Notifications). The content and form of all these communications is prescribed by regulation (See Annex A). The Ofcom Pre-Contract Information and Contract Summary documents were specifically brought in to allow effective comparison between telecoms suppliers and tariffs.

Given other regulators (Ofcom and the FCA respectively) prescribe these communications and enforce our compliance with them, we do not think it is appropriate for them to be considered 'invitations to purchase' for the purposes of the guidance. We note that they already include the information set out in section 230 of the DMCCA.

We therefore request a specific exclusion from the guidance for communications that are required under other regulation, should the CMA not exclude the telecoms sector more generally.

A requirement to provide the amount the consumer will incur over the course of the contract is likely to confuse customers, which is not the intention of the draft guidance.

There is a real risk consumers will be misled by a total price in the case of minimum term contracts (even with best intentions to comply) as any total price given will be notional. There is also a risk consumers are less able to compare prices to make the best decision for their individual needs:

a) As mentioned above, regulation (Ofcom and ASA) already requires us to show 1) the monthly price 2) the minimum term 3) the monthly price after a first price rise and 4) the monthly price after a second price rise. Where we have special offers or discount periods, the advert will also show other numbers. Adding a new 'total price' means consumers would see **at least five different numbers in the same piece of advertising**. In previous guidance relating to online choice architecture, the CMA has acknowledged that information overload is almost always harmful because it disempowers and confuses consumers.[11] We do not have the option to exclude those monthly prices, despite the wording at the end of para 9.17 of the draft guidance. Even in the absence of existing regulation, as customers will be responsible for paying monthly, simply stating a notional total price over the course of the minimum term, whilst omitting those monthly amounts, risks misleading and forcing customers to attempt to correctly reverse engineer the numbers to understand what they are going to be responsible for each month. We're not only concerned that customers will be confused by seeing five numbers

[11] CMA (2022). Online Choice Architecture - How digital design can harm competition and consumers - discussion paper, 20.

in a single communication, but that they then understand none of them. There is clear potential for the rule to result in a reduced understanding of our products rather than customers being better informed.

b) Customers can only pay us monthly for the service, as the service is provided monthly, and bills fall due monthly. [✂] risks customers making erroneous decisions based on an assumption that the total upfront price is what is due, or that they can pay in a way which is not permitted, which could put them in arrears.

c) There is no way for telecoms companies to predict at the invitation to purchase the level of incremental charges that each individual consumer will incur (for example, calls or texts to premium rate services, roaming charges or calls outside their allowances). Therefore, any notional total price over the course of the contract may not be reflective of the total cost the consumer actually pays. This again risks misleading the consumer into thinking the notional total price is a ceiling and is a key reason why the guidance in paragraph 9.17 should be limited to mandatory fees to prohibit drip pricing.

d) As mentioned above, consumers are used to comparing monthly prices for telecoms services and budgeting for these services based on what they can afford monthly. Price comparison sites also function on this basis. As a 'total price' will depend on the length of minimum term it is an unreliable measure to allow effective comparison. Consumers would find comparing prices more difficult than is currently the case, which could inadvertently lead to less choice and less effective competition than currently. The proposed interpretation of the section 230 requirement by the draft guidance is not only therefore unnecessary but likely harmful to consumers.

e) Customers are not only used to seeing and comparing monthly prices, but more importantly budgeting monthly for these services. Affordability checks confirm the customer can afford the monthly price, and not whether they have funds to pay the 'total price' incurred over the course of the minimum term at any one point (as they will not need to do that). Seeing a 'total price' in an advert could put some groups of customers off buying, upgrading or switching as they either think they can't afford it, or that they won't pass the necessary checks to be able to buy it. This would have a greater impact on those consumers who are more financially vulnerable and less able to understand how they will in fact be paying. Telecoms are a vital service for all sectors of the population. Ofcom has done a huge amount of work to ensure customers are easily able to compare prices and switch between providers to take advantage of the best deals. This draft guidance risks confusing customers so they are scared to switch for fear of not being able to afford or pay for a product that they can afford.

f) One of the reasons telecoms products are sold with a minimum term is to provide certainty for us as a provider which enables us to plan for long-term investments in our network. In the mobile sector, as well as minimum term contracts, we offer

services that run on a 30-day rolling contract that suit certain customers. As the revenue stream for these services is less certain, the monthly cost is higher than on the plans with a 24-month minimum term. Our reading of the draft guidance is that invitations to purchase 30-day rolling services would not need to display a 'total price' incurred over the course of the contract. There is therefore a risk that providers solely advertise those services, which could mean less awareness of other options that might be more suitable for the consumer; and again, could have a greater impact on more vulnerable consumers who engage less easily with the market.

g) All mobile, broadband and TV packages roll onto a monthly recurring plan once any minimum term ends, if customers don't cancel or upgrade. Customers are aware of this (via the regulatory communications required by Ofcom) and it avoids a situation where they are left without service. This means that payment obligations continue after the end of the minimum term to avoid service disruption. Giving a total price risks confusing customers as it implies the total price is a ceiling which is not the case.

h) Due to our price rise mechanic, as described above, any total price will vary depending on when a customer joins, and the invitation to purchase will quickly become out of date. There is therefore a risk consumers are misled by out-of-date pricing (without that being our intention) due to the complexity in managing our advertising estate. While not advertising pricing in certain media may help avoid this risk, it does mean consumers will have fewer places to encounter deals and offers that may be to their benefit.

In summary, imposing a requirement to provide a notional total amount the consumer will incur over the course of the contract will not result in providing the consumer with the key information they need to make an informed transactional decision, as posited in paragraph 9.4 of the draft guidance. It in fact inadvertently risks providing less clarity, which is the opposite of the intention stated in paragraph 9.15 of the draft guidance.

A new regulatory burden should only be imposed on businesses in response to a clear consumer harm, especially where robust regulation already exists. Any changes to how pricing is shown in our advertising needs to be built upon robust customer research. This would ensure any changes both target and are limited to actual harm and provide a net benefit. We are not aware of any consumer research having been done into the benefits for consumers of seeing a 'total price' over the duration of a minimum term.

Due to new Ofcom and ASA regulations which came into force on 17th January 2025, we have just introduced tweaks to how our price rise information is shown. This needs time to embed. Given that, and the risks highlighted above that consumers could in fact be misled or confused by a 'total price', we believe it is not in consumers' interests for our services to show a total price as envisaged by the draft guidance.

As well as confusing customers, providing the amount the consumer will incur over the course of the contract also introduces operational complexity, higher costs and an undue burden on highly regulated telecoms businesses.

Providing a 'total price' is not as simple as multiplying our monthly fee by the length of minimum term and inserting that new number into an advert. We sell thousands of products and services at different price points, and these price points will change depending on offers available at any given time. Beyond our three websites (ee.co.uk, bt.com and plus.net) and apps, we advertise and communicate with customers via thousands of touchpoints every day: including direct marketing, emails, online banner ads, online social media ads, press ads and print media, outdoor, radio and TV. All advertisements and communications are planned weeks in advance and many touchpoints (e.g. outdoor advertising or TV) are live for a number of months.

[✂]

While it may be small, there is still a difference in the 'total price' incurred over the course of the minimum term. The above example shows that an invitation to purchase going live in December would be out of date within a month. The total price shown would therefore not be the 'total price a consumer will necessarily incur', where we have adverts live across several months. Moreover, it cannot account for any incremental charges (such as access to premium rate services) that a consumer may or may not choose to incur during the contract. Additionally, as the CMA's guidance will not sit in isolation from other regulation, we would risk being in breach of rule 3.1 of the CAP and BCAP Codes which states that '*advertising must not materially mislead or be likely to do so'*.

The rules we are currently subject to (from Ofcom and ASA) mean we clearly present each of these monthly prices above and show the date they change. A customer seeing this advertising will have complete clarity over what the deal means, whenever they see the advertising; and we are able to keep it live over several months without risking misleading customers.

Due to the number of customer touchpoints and products, and the pricing model we operate, we would need to build automated capability to correctly calculate, then update, a total price on a regular basis without error. It is not possible for us to meet the demands of our advertising, and provide accurate numbers, if this was done manually on an ad hoc basis. That work to build a suitable automated solution requires time and resource to develop, build and test. It also takes budget and other resources away from other customer-facing initiatives.

Equal Prominence

In addition, the draft guidance does not make it sufficiently clear when 'equal prominence' of a total price would apply. Paragraphs 9.23, 9.31, 9.33 and 9.36 of the guidance refer frequently to equal prominence being required *where total prices cannot*

be calculated in advance (e.g. per kilo pricing). It is only once (on p104 of the draft guidance where the differences between the DMCCA and Consumer Protection from Unfair Trading Regs are set out) that the guidance states the total price must appear with equal prominence.

Should the guidance not change substantially, it will be essential to provide additional clarity to business as to when the equal prominence rules will apply.

Timing

The release of the draft guidance just before Christmas when there are more limited business resources over the holiday period has meant the business has not had the full benefit of the six-week consultation period to fully consider and discuss the implications of the draft guidance. As stated above, the implications to the consumer in terms of the clarity of the information provided, and the implications to us in terms of potential additional regulation and cost to the business are significant should the draft guidance not change to take account of concerns raised.

On 17th January 2025 new Ofcom and ASA rules were introduced requiring that in-contract price increases be shown in pounds and pence. The timing of this draft guidance, immediately following our year-long project to comply with the new Ofcom requirements, imposes a costly additional regulatory burden and demonstrates a lack of regulatory co-ordination. This added complexity and cost is not conducive to economic growth, particularly in the highly specialist telecoms sector, which already faces significant compliance demands. It is also not balanced by a demonstrable consumer benefit (and as shown above could lead to worse consumer outcomes).

The CMA has not indicated when the final guidance will be published following all responses. As there are only ten and a half weeks between 22nd January and the proposed implementation date of 6th April we are concerned there will be very limited time to implement any changes needed in a way which ensures full compliance. This could further adversely impact consumers in addition to the inherent risks in the policy highlighted in our response.

Conclusion

For the reasons set out above, we urge the CMA to clarify in the final guidance that the requirement in s230 of the DMCCA to include a 'total price' in invitations to purchase applies only to actual drip pricing, and does not extend to require a notional 'total sum' to be calculated for contracts with a fixed (or in our case minimum) term. Drip pricing does not include a situation where the consumer can calculate the total price on the basis of clear information provided (for example, a per monthly price and a specified number of months), or where consumers opt to incur incremental costs (such as roaming charges).

Alternatively, we are of the opinion that the highly-regulated sectors, such as the telecoms sector, should sit outside any requirement for fixed term contracts to show a notional total price incurred over the course of a minimum term, in a similar way to how they will sit outside the subscription requirements of other elements of the DMCCA. The regulation imposed on these sectors by active regulators should be deemed sufficient.

Should the draft guidance not change, the CMA timelines y given simply do not allow us to implement a total price without risk to customers and our business processes. As you appreciate, budgets and resources are allocated to work months in advance and having to re-allocate them to build and implement an automated solution with no obvious consumer benefit risks delivery of those crucial projects in a challenging economic environment.

We would need and expect a minimum of nine to twelve months from delivery of final guidance before rules/guidance come into force. Anything less than that risks customers seeing misleading information and businesses being forced into non-compliance both with this guidance, and with existing rules.

[✂]