



Sky response to the Competition and Markets Authority's consultation on draft guidance on the unfair commercial practices (UCP) provisions in the Digital Markets, Competition and Consumers (DMCC) Act 2024

About Sky

Sky is the UK's leading entertainment and telecoms business, employing more than 26,000 people across the country and contributing £20 billion annually to the UK economy.

Sky recognises the critical role that effective regulation plays in supporting consumer protection and therefore welcomes the opportunity to respond to the CMA's consultation on draft guidance on the unfair commercial practices (UCP) provisions in the Digital Markets, Competition and Consumers (DMCC) Act 2024.

Summary

Sky acknowledges the CMA's intention to improve consumer transparency by requiring more detailed information about subscription products. We support the principle of consumers having access to relevant data to make informed decisions at the appropriate point in the purchase journey, and we are committed to this approach as a business.

Our comments in this response are limited to issues related to the interpretation and impact of the "drip pricing" provisions. Firstly, the Act contains reference to "**total price**" and to "**total amount**". We don't believe that Parliament clearly defined its intention here, beyond that total price and total amount are clearly different terms intended to mean two different things. Sky believes that to not interpret the two terms differently in guidance may lead to negative consumer outcomes.

Secondly, we are concerned that some of the consumer benefits that the CMA is seeking may be undermined by the CMA's guidance which could make it harder for consumers to compare products as different minimum terms will mean significantly different total aggregate amounts.

Finally, the deadline of April 2025 for the commencement of the regime and for business to implement any required changes to take account of the new guidance is unrealistic and disproportionately burdensome on business. The CMA is unlikely to be able to confirm its final position on the guidance much before March, giving at best only a few weeks for Sky to implement significant changes to business practices to become compliant with the new regime.

We would note that the consultation period on the draft guidance of only six weeks, including the Christmas and New Year period, is unreasonably short for a consultation of this nature. We consider that the CMA should clarify how it intends to support business to understand the implications of the new rules and through any transition required to their business practices. Sky would welcome the opportunity to meet to discuss this with the CMA.

Our concerns with the draft guidance

The guidance fails to draw the correct distinction between 'total price' and 'total amount'.

The CMA interprets the “total price” requirement in the drip pricing section (Section 230) as meaning the same thing as the “total amount” requirement in the subscriptions contract section (Schedule 23) – that the total aggregate minimum amount for which the consumer would be liable under the contract should be set out as a single figure in any invitation to purchase.

We maintain that the Act uses different words (“total price” and “total amount”) because Parliament intended them to mean different things. This is consistent with the consumer harms that the Act was intended to address as well as broader policy considerations and principles of statutory interpretation.

The **“total price” provision in the drip pricing section** of the Act requires traders to make clear all the mandatory charges that a consumer must pay in any invitation to purchase in a prominent way so that consumers are not surprised by unexpected additional charges later in the purchase journey. The word “total” requires traders to make clear what those additional charges are but does not necessarily require the trader to state a total aggregate amount.

The example given in the draft guidance of a gym membership contract with a minimum term of 6 months is a simple one – *“if a trader advertises a £22 per month gym membership for a fixed 6 months’ contract, the invitation to purchase should state that membership costs £132.”* With more complex contract situations, in practice, the total cost to the consumer will vary depending on the individual consumer, including what offers they may have and variable delivery and installation costs depending on, for example, where the consumer lives or what equipment they currently have in their home.

It is unlikely that Parliament intended advertising to include multiple total aggregate amounts to reflect the circumstances of any consumer who may see the advert, or that traders should include a total aggregate amount applicable to only some consumers, but which could be misleading for others. It is much more likely that Parliament intended “total price” to mean that the headline amount must not mislead consumers by omitting mandatory charges (drip pricing) rather than mandating that traders must calculate, and advertise, separate total prices for every consumer unless it is genuinely impossible to calculate that figure in advance.

The **“total amount” provision in the subscription contracts section** of the Act requires traders to state the total aggregate amount in the pre-contract information at a much later stage in the purchase process than advertising but *before* the final purchase decision has been made. This is the appropriate point to state the total aggregate amount as the circumstances of that consumer is known at that point, so a meaningful single aggregate figure can be provided, which the consumer considers when deciding whether to proceed with the purchase. In short, if Parliament had intended total price and total amount to mean the same thing, it would not have used different words and there are clear and rational reasons why Parliament made that distinction. The CMA should revise its guidance on this point accordingly.

The guidance could lead to worse outcomes for consumers

We support the policy goal of ensuring that consumers have access to the right information before making a purchasing decision. However, we have concerns that the proposals in the draft guidance could have the opposite effect of impacting negatively on the consumer experience, and the consumer’s ability to choose the right products and services for them.

The types of conduct normally referred to as “drip pricing” are practices that obscure the true cost of a product or service until late in the purchasing process. Such practices can mislead consumers into committing to purchases they might not have made if full pricing information had been clear and upfront. It seems sensible to us that intervention should be targeted at addressing consumer harms arising from these practices. However, we consider that the guidance could inadvertently undermine this.

Conflating “total amount” with “total price” risks misapplying provisions that should be correctly targeted at “drip pricing” and therefore undermine their effectiveness. Consumers tend to budget and therefore assess the affordability of subscriptions monthly, allowing them to weigh the features, benefits, and overall value of a subscription in proportion to their regular financial commitments. Presenting the total aggregate amount payable under a long-term contract could obscure this evaluation and divert focus from the practical information consumers need to make well-reasoned comparisons when assessing which products or services to purchase. Providing consumers with a figure that does not align with how they typically pay for their services or subscriptions is not an appropriate way to ensure that they best consider the value of a particular service.

Sky also recognises that clear and comprehensive information is essential for ensuring that consumers can confidently assess and compare different products in the market. Notwithstanding our view on the difference between total price and total amount the requirement for total price to be displayed at all stages of the purchase journey could make it considerably harder for consumers to compare similar products. Different minimum terms will inevitably mean significantly different total aggregate amounts, which may encourage consumers inadvertently to choose a product with a higher monthly price but a shorter minimum term. For example, the total price of a contract at £20 a month for 6 months (£120) may appear cheaper to a consumer than a lower price product with a longer minimum term, such as £10 a month for 24 months (£240). As such, consumers could be misled into choosing options with higher monthly prices for shorter contract terms, even if they would benefit more from a lower-priced product with a longer term. In this instance, the CMA’s interpretation might lead to comparisons that focus more on the total price and contract duration rather than on the overall value of the product.

In addition, the proposed approach could have the effect of significantly altering the look and feel of advertising of subscription products in the UK. Whilst transparency in pricing is important, it is also important to consider the timing and presentation of such information. As set out above, our view is that Parliament correctly intended total pricing information to be provided later in the purchase process, where consumers are more likely to engage in detailed scrutiny, and not at the start. Overloading advertisements with additional financial information risks obscuring rather than illuminating the key points necessary for informed decision-making. Therefore, paradoxically, it could disempower consumers by making it harder to make comparisons or to determine true value.

The proposed timescales for implementation are unjustifiably short

The substantial administrative burden associated with implementing the changes required by the proposed guidance means that sufficient time must be afforded to business for implementation.

Whilst we have set out our view that the CMA’s interpretation of total price is incorrect, implementing the requirements of the proposed guidance would require us to make significant changes to marketing, advertising and the way in which our online purchase processes work to ensure a personalised total aggregate amount is available at all stages of the purchase journey, taking into account all of the conceivable individual circumstances that would affect the cost to the consumers. This would require a significantly longer timeframe for us to implement, like that which will be required for implementing the subscription contracts section of the Act. Therefore, we consider it would be appropriate for the CMA to align the implementation period of this guidance with the implementation period for subscription contracts – i.e. in April 2026.

Sky