

**SMMT response to consultation on
the unfair commercial practices draft guidance CMA207con
22 January 2025**

Introduction

1. The Society of Motor Manufacturers and Traders (SMMT) is one of the largest and most influential trade associations, representing the automotive industry in the UK.
2. The automotive industry is a vital part of the UK economy, integral to growth, the delivery of net zero and the UK as a global trade hub. It contributes £93 billion turnover and £22 billion value added to the UK economy, and invests around £4 billion each year in R&D. With 198,000 people employed directly in manufacturing and some 813,000 across the wider automotive industry. Many of these automotive manufacturing jobs are outside London and the South-East, with wages that are around 13% higher than the UK average. The sector accounts for 12% of total UK exports of goods with more than 140 countries importing UK produced vehicles, generating £115 billion of trade in total automotive imports and exports.
3. The UK manufactures almost every type of vehicle, from cars, to vans, taxis, trucks, buses and coaches, as well as specialist and off-highway vehicles, supported by more than 2,500 component providers and some of the world's most skilled engineers. In addition, the sector has vibrant aftermarket and remanufacturing industries. The automotive industry also supports jobs in other key sectors – including advertising, chemicals, finance, logistics and steel.

Executive Summary

4. This response highlights key concerns and practical recommendations regarding the CMA's draft guidance under the Digital Markets, Competition and Consumers Act 2024 (DMCC). Our focus is on ensuring the guidance is clear, balanced, and actionable for businesses.
5. We recognise that the intention of the DMCC is to strengthen safeguards for consumer protection. However, the detailed provisions of the draft guidance present challenges for businesses in their individual sectors where particular sales characteristics exist.
6. For businesses to comply effectively, the guidance should offer clarity, ideally with illustrative examples that can be applied to the automotive sector, and clear steps for managing new responsibilities, such as those concerning drip pricing and online reviews.
7. This response concludes with our recommendations, suggesting more detailed practical examples, sector-specific guidance, and transitional arrangements to help businesses adapt. We would welcome a balanced approach that ensures robust consumer protections whilst also enabling businesses to operate confidently.

Key Points

Definitions

10. The draft guidance broadens definitions including "misleading omissions", "misleading actions", "average customer", and introduces "transitional vulnerability". While this is well-intentioned, these definitions could introduce grey areas such as varying approaches to the average consumer test factoring in vulnerabilities to be more subjective, or transactional decisions applying to a greater variety of interactions where omission of information could occur. Without clear examples, businesses risk falling inadvertently into non-compliance despite acting in good faith. This lack of clarity could result in inconsistent enforcement and increase consumer detriment due to uncertainty .
11. More detailed examples that have relevance to various sales structures would assist businesses to interpret these provisions confidently and provide consumers with confidence in their rights.

Invitation to Purchase

13. The revised definition of "invitation to purchase" builds on established case law but imposes stricter obligations for businesses alongside the removal of legal tests when considering if omissions from invitations are misleading. Businesses must now provide material information where such obligations did not exist for an "invitation to treat". This risks catching businesses unaware, particularly in sectors which utilise online platforms, where pricing and product details are often split as in franchised distribution arrangements in the automotive sector.
14. Specific guidance is requested to help businesses navigate this change and distinguish between on the one hand promotional information which has no compliance consequence and promotions which are required to meet transactional obligations.

Indicative Pricing

16. In the automotive sector, vehicle manufacturers and importers (OEMs) apply a long-established practice of displaying On-The-Road (OTR) pricing in promotional materials. This indicative pricing approach gives consumers the opportunity to compare models without undermining the independence of the franchised dealer in setting the final price. The OTR price covers the Manufacturer's Suggested Retail Price (MSRP), together with any extras known to be fitted to the car, number plates, any delivery charges, the appropriate VAT (quoting the rate applicable), the cost of 12 months' Government Vehicle Excise Duty, and the first registration fee. The franchised dealers that actually sell the vehicles then determine the final

actual transaction price the consumer will pay. If indicative pricing were treated as an invitation to purchase, this could require full disclosure of all material information, including total price. This would represent a significant change in the automotive market, and further could inadvertently introducing a price monitoring risk under competition law. SMMT seeks clarity on how CMA would treat MSRP and OTR pricing, in light of our material concerns raised in this paragraph.

Material information

- 17. We are concerned about the extent of information considered relevant under s230(2). This level of information risks being excessive resulting in consumers being overwhelmed when making a transactional decision as well as placing undue operational burdens on businesses.
- 18. OEMs may provide an online stock locator platform for their franchised dealers to list new and used car stock that is currently available for sale on dealer forecourts. The listings include the transaction price, specification, and the dealer's location and identity. The dealer controls the content of the online listing. The guidance should take account of this type of scenario to clarify that the invitation to purchase responsibilities lie with the dealer.

Fake Reviews

- 19. Businesses often rely on third-party platforms to host reviews, over which they have limited control. Holding businesses fully accountable for fake reviews in such cases could be unfair. The guidance should outline what constitutes "reasonable steps" for identifying and addressing fake reviews, offering a fair balance between accountability and practicality.
- 20. In circumstances where a business does not regularly publish reviews nor provide a specific platform for reviews, we would question the proportionality of requiring a comprehensive policy, risk assessment, and process. For example, businesses whose exposure is primarily through influencers - clearly identified as incentivised advertisements in compliance with ASA Codes - rarely publish reviews, rather they re-share those of the influencers.
- 21. The guidance acknowledges the need for proportionality. However, meeting the requirement for a clearly identifiable policy, risk assessment, and review process may not always be proportionate in cases where activity is limited. Examples clarifying these proportionality considerations would be valuable.

Transitional Arrangements

- 21. Diverging from EU consumer protection frameworks adds complexity for businesses still adapting to post-Brexit changes.
- 22. Compliance with the guidance may require substantive changes to infrastructure and IT systems, for which a relatively short deadline is given between CMA's expected final publication date and the enforcement in April 2025. A phased implementation period may ease the transition and allow businesses to adapt without unnecessary disruption.

Conclusion

- 23. We recommend the CMA provide sector-specific examples and guidance to address relevant scenarios that can be applied in the automotive sector, and clarify distinctions like "invitation to purchase" versus "invitation to treat."
- 24. Practical examples should also illustrate how businesses can address transitional vulnerabilities to ensure fair outcomes, particularly where consumer vulnerabilities may not be immediately apparent.
- 25. Clearer examples of reasonable steps businesses can take to comply, particularly in cases of limited activity like re-sharing third-party reviews, are essential to ensure proportionality and practicality.
- 26. OEMs seek confirmation that publishing the OTR price as set out in paragraph 16 above, would be compliant with the guidance.
- 27. We would welcome a phased enforcement approach as this is critical to allow businesses sufficient time to adapt to new and complex provisions.
- 28. If the CMA would like to discuss any of the above, we would be happy to engage further.

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