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Urgent – For Immediate Attention

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Competition and Markets Authority
25 Cabot Square
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31st January 2025

Dear ██████████

UCP Guidance on 'drip pricing' and interpretation of total price

We write to express urgent concerns regarding the Competition and Markets Authority's (CMA) proposed interpretation of "drip pricing" provisions in its draft unfair commercial practices guidance (**Guidance**) under the Digital Markets, Competition and Consumers Act (**DMCCA**).

The Guidance inaccurately categorises telecommunications contracts with a monthly recurring charge and a minimum contract term as a form of drip pricing. These contracts do not in any way represent drip pricing or share any resemblance to it. The monthly recurring charge is the total mandatory price payable by customers and is fully disclosed at all stages of the customer journey. This is always presented upfront alongside the minimum contractual term as well as any mid-contract price increases that may be applicable. No other mandatory elements are revealed later in a checkout process. Drip pricing on the other hand is a practice where companies only advertise part of a product's price upfront (to draw in prospective customers) and reveal other mandatory charges later in the buying process.

The telecommunications industry operates under a well-established, transparent pricing structure regulated by Ofcom and complemented by FCA and ASA rules. The proposed interpretation would create regulatory conflicts, mislead consumers, and impose unnecessary burdens on providers. It would require telecommunications companies to display projected total contract commitment prices, which are variable due to personalised service bundles, handset financing options, and mid-contract price adjustments. Presenting a single total commitment price in these scenarios would be misleading and impractical and, in many instances, inaccurate.

We set out in this letter:

- a. Background to the DMCCA 'drip pricing' provisions & telecommunications advertising;
- b. Our concerns arising from the 'drip pricing' part of the Guidance if applied to the telecommunications sector;
- c. Why the Guidance incorrectly interprets the relevant provisions of the DMCCA; and
- d. Our requested next steps, including the CMA's reconsideration of the Guidance.

A. Background

Drip pricing and the DMCCA

1. The Government, rightly, in our view, took steps in the DMCCA to address and prohibit harmful drip pricing. This arose out of the Department for Business & Trade's *'Consultation on Improving Price Transparency and Product Information for Consumers'* (4 September 2023). In its response to the Consultation - which did not reference telecommunication contracts – the CMA stated that this banned practice (i.e. drip pricing) was necessary to “prevent traders from using spuriously variable or ‘optional’ charges in order to give a fictitious headline price”. Banning “sneaky hidden fees” was the overriding Government objective in strengthening the rules in this area: <https://www.gov.uk/government/news/new-laws-set-to-ban-mandatory-hidden-fees-from-online-shopping-saving-money-for-consumers>.

2. We are supportive of the intention behind the DMCCA. It is important that consumers should not be misled by fictitious headline prices that are unachievable and that unavoidable mandatory costs are always included in headline prices rather than 'dripped' later in a checkout process. However, that is not what happens in telecommunications advertising, for the reasons explained below.

Existing regulatory framework for telecommunications advertising

3. It has long been the position that advertisements for multi-month telecommunications contracts must clearly set out upfront the monthly recurring charge alongside the minimum term and any applicable up front costs. Any mid-contract price increases that may be applicable must now also be prominently stated (in cash terms). Together this constitutes the total mandatory charge payable by customers and is fully disclosed at all stages of the customer journey. No other mandatory elements are revealed later in a checkout process. This is not a practice which could legitimately be described as 'drip pricing' nor is it the type of practice which the DMCCA was intended to address.

4. Ofcom considered the approach of stating a total price of mobile phone contracts over the full minimum term as part of its recent consultation on mid-contract price rises but concluded that it was impractical and wouldn't work, stating that “it may be difficult to implement a requirement to present the total contract cost or average monthly price of all services subject to the GCs effectively”.

5. The monthly recurring charge plus minimum term helps consumers with their monthly budgeting and allows them conveniently to compare the offerings of different telecommunication operators, including on comparison and aggregator sites (some of which are accredited by Ofcom). This accords, by analogy, with the CMA's own research into unit pricing, which “highlights the value of unit pricing when comparing between grocery items – revealing that shoppers' commonly held assumptions about what products are cheapest on a per unit basis aren't always right and that the pricing of some products relative to others can be surprising” [Unit pricing - GOV.UK](#).

6. Ofcom, the designated regulator of the telecommunications sector, sets down and implements detailed rules for the advertising and sale of telecommunication services (including implementation of the European Electronic Communications Code (**EECC**) in Ofcom's General Conditions). Those rules are complemented by the rules and guidance of the Committee of Advertising Practice (**CAP**), enforced through the Advertising Standards Authority (**ASA**). In particular, the ASA set out in 2016 three 'Key Principles' for telecom advertising, including it being necessary to “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".

7. In addition, the Financial Conduct Authority (**FCA**) rules, applicable by reason of the consumer credit nature of the handset loans provided by most operators, mandate that operators provide consumers with pre and post contractual information relating to the loan they are entering into. The same is true of the requirements contained in the EECC, which specify that consumers must be provided with very detailed information (e.g. price, duration of commitment) about the communications services they are purchasing, and having received that, must give express consent before a contract is binding.

Types of telecommunication contracts in the market

8. A multi-month telecommunications contract is complex with many different variables which makes providing consumers with a single accurate figure at the outset of the arrangement for their total commitment impossible. The consumer "builds their own bundle" between different options which results in their own personalised agreement each of which may have different monthly prices and total commitments.
9. There are different types of telecommunications arrangements/contracts that a customer may enter into when wishing to purchase a new mobile handset and/or enter into an agreement for the provision of mobile airtime:
 - "Bundled contracts" which include the handset and airtime under one contract with a minimum term of no more than 24 months;
 - "Split contracts" where the customer enters into an agreement for the provision of mobile airtime (minimum term is typically 12 or 24 months), and a second loan agreement, regulated by the FCA, under which the network operator loans the customer a fixed sum related to the value of the handset they wish to purchase over a term determined by the customer, but typically up to 36 months ; and
 - "SIM only" contracts, which relate to airtime only.
10. The split contracts model is increasingly common in the telecommunications market. Consumers will typically take out both an airtime plan and a loan agreement concurrently, which are usually of different term lengths. Particularly in the case of upgrades, there are a variety of circumstances in which the airtime plan will be modified or replaced prior to the end of its term, and the device loan may be paid off at any time. If a consumer pays off the loan early that has a significant impact on the total cost over the term of the overall agreement. Network operators commonly waive any further ongoing airtime commitments if the device loan is paid off early. Indeed, customers are often encouraged to trade in the value of their device to pay off an existing loan, followed by a new split contract arrangement.

B. Concerns re: Application of 'drip pricing' part of Guidance to telecommunications sector

11. We would like to address a specific point in the Guidance which relates to the interpretation of the requirement for a trader to provide the 'total price' of a product in an invitation to purchase under s.230(2)(b) of the DMCCA. The issue relates specifically to the following statement and example given at paragraph 9.17 of the UCP Guidance:

"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."

12. Applying the interpretation of drip pricing, as presented in this section of the Guidance, to all situations involving fixed-term contracts - regardless of individual advertiser circumstances or sector – would not be appropriate. We have outlined our reasoning for this position in this letter and in UK Mobile's response to the consultation..
13. The Guidance would, if implemented in the telecommunications sector: (i) require telecommunications providers to radically alter pricing practices; (ii) present a headline price that would be inaccurate in many scenarios; and (iii) make meaningful price comparisons by consumers impossible.
14. The CMA's proposed approach also disregards the existing regulatory framework governing the telecommunications sector, as set out above, which already ensure transparency in pricing and provide robust consumer protection. As it stands, the Guidance would create regulatory conflict and confusion, imposing an unnecessary additional burden on providers.
15. Having considered the matter with our external advisers (including expert counsel), we have concluded that the Guidance wrongly interprets, and fails to take account of, the relevant provisions of the DMCCA – in particular 'total price' and whether it can reasonably be calculated in advance.

C. Why the Guidance incorrectly interprets the relevant provisions of the DMCCA

Relevant provisions of the DMCCA

16. Section 230 of the DMCCA deals with "omission of material information from invitation to purchase". It provides, insofar as relevant for the issue raised, as follows:

"a commercial practice which is an invitation to purchase omits material information if, considering the matters mentioned in subsection (8), it omits ... the total price of the product (so far as paragraph (c) does not apply) ... and is not already apparent from the context." (ss.230(1) and (2)(b)).

Subsection 230(2)(c) provides:

"if, owing to the nature of the product, the whole or any part of the total price cannot reasonably be calculated in advance, how the price (or that part of it) will be calculated" (230(2)(c));

and subsection 230(8) provides:

"any limitations resulting from the means of communication used in the commercial practice (including limitations of space or time) and any steps taken by the trader to overcome those limitations by providing information by other means".

17. Taking these together, the following issues must be addressed when considering the applicability and interpretation of the 'total price' requirement under s.230(2)(b):
 - a. Whether the total price, as it is now defined by the Guidance, is already apparent from the context;
 - b. The correct interpretation of "total price" for minimum term telecommunications contracts;
 - c. Whether the total price can reasonably be calculated in advance; and

- d. Any relevant limitations resulting from the means of communication used in the commercial practice and any steps taken by the trader to overcome those limitations by providing information by other means.

Incorrect interpretation of the DMCCA

18. Paragraph 9.17 of the Guidance is not appropriate for multi-month telecommunication contracts because:
 - a. The 'total price' for a multi-month telecommunications contract, as it is defined by the UCP Guidance, would be immediately apparent to the reasonably well-informed average consumer, simply from the context of being told any up front cost, the mandatory monthly recurring price and the minimum term.
 - b. The total price for a multi-month telecommunications contract is the up front cost if applicable, and the amount a consumer is required to pay for each monthly instalment. Neither the legislation itself, nor its Explanatory Notes, give any indication that the total price for a such a contract is anything other than the monthly price. Providing a monthly price has always been an accepted price indication.
 - c. Focussing on the contractual minimum term is likely to mislead because it is, for a variety of reasons, rarely the total amount paid by any consumer and is a projected cost.
 - d. Giving the total price for a multi-month telecommunications contract at the outset may also be inaccurate where, for example, the consumer may exercise the right to purchase a new phone, the device loan is paid off, or the monthly price can be lawfully varied, within the minimum period.
 - e. It is not possible to calculate with certainty the total cost commitment of a multi-month telecommunications contract in advance and provide that to all consumers in an advertisement as a single cost.
 - f. It is not possible in a telecommunications advertisement to provide the consumer with all the information which is mandated by the regulators, which is therefore provided to consumers by other means prior to purchase.

We consider these points in more detail below.

(a) The total price of a telecommunications contract is apparent from the context

19. The assessment of what is "already apparent from the context" must be undertaken by reference to the average consumer, who is reasonably well informed, reasonably observant and circumspect. It must be obvious that such a consumer would understand the total price (as it is now defined by the UCP Guidance) from the context of being told the total monthly price and the minimum term.
20. In another context, someone seeking to rent an apartment would expect the price to be quoted on a monthly basis, rather than the total cost over the full rental term. This is reflected in the existing rules for multi-month telecommunication contracts advertising as referred to above, requiring mobile network operators to prominently state, in addition to any up front cost, the minimum term of the agreement alongside the monthly price.

The total projected price of the arrangement is readily apparent from the context

(b) The correct interpretation of "total price"

21. The statutory obligation to provide the 'total price' is not a new obligation. It has been a part of the domestic law for over a decade since implementation of the Consumer Rights Directive in the

form of the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013, see Schedules 1 and 2.

22. Despite it being such a longstanding obligation, no regulator suggests that the total price for a multi-month contract is based on its minimum term. It is not an obligation that has previously been identified in CMA (or OFT) Guidance. It is not set out in the CTSI Pricing Practices Guide or any of its predecessors. Providing a monthly price (and any up front cost, if applicable) has been regarded as a sufficient price indication for a multi-month contract since there was first regulation of price indications in the Trade Marks Act 1968. There is no statute, statutory instrument, domestic or European case law, or any domestic or European guidance which suggests that the total price for a multi-month contract is anything other than the price for a month.
23. It is also surprising that the CMA would introduce such a novel concept in the form of Guidance. It is a definition that is absent from the statute or any of its Explanatory Notes. It is also particularly surprising to have introduced the concept in the context of drip pricing.

The Guidance wrongly equates total cost commitment with total price

24. In a multi-month telecommunications contract it is not possible to calculate the total cost commitment of the entire arrangement in advance and provide that to all consumers in an advertisement as a single cost. That is for a range of reasons, including:
- When selecting an airtime contract consumers can choose different terms of the arrangement (e.g. 30 days rolling, 12 or 24 months) which impacts on the monthly price and total cost over the whole selected term.
 - The duration of the two contracts that consumers on a split contract arrangement may have are not necessarily the same (e.g. customers with a 36 month handset plan and 24 month airtime plan are not committed to continuing with their airtime plan for an extra 12 months, although many will).
 - Where a handset loan is taken out under a split contract arrangement, the monthly price includes an element for the loan provided to the consumer which is paid off over the whole period of the arrangement. As airtime agreements are treated as collateral contracts to these handset loans and can be paid off early by customers, these scenarios would materially impact the accuracy of the 'total price' formula that is being proposed in the CMA guidance.
 - Consumers may benefit from special offers specific to their particular circumstances, such as multi-line discounts.
 - Consumers increasingly exchange or upgrade their mobile phones prior to the end of the minimum term, which may depending on the specific circumstances impact on the total cost they pay (as they may terminate or renew their airtime plan); and equally they may continue with the arrangement beyond the minimum term.
 - It would be open to a mobile network operator to change the monthly cost (on notice to the consumer) within the minimum term period in certain circumstances.
 - The total cost commitment of airtime will vary depending on the month in which a consumer buys a plan, as the price is subject to increases each April (i.e. there will be a difference in the total cost commitment if the consumer takes out a contract just before or just after April). This means that two customers viewing the same advert may end up with a different total cost commitment depending on when they contract.
25. We note that the UCP Guidance itself provides at paragraph 9.29 that:

"In more complex circumstances, where the total price would depend on a multitude of factors, providing the required information which would enable the consumer to calculate the total price

may mean that the trader should provide a full tariff of the various options for what the total price may ultimately be."

This is what already happens in the advertising of multi-month telecommunications contracts, which undoubtedly fall within the 'more complex circumstances' proviso, given that the total cost of those arrangements do depend on a "multitude of facts" as explained above. In fact, forcing a mobile operator to give a total cost of such arrangement risks misleading consumers and overstating the level of commitment which the consumer is entering into.

26. It is perhaps relevant to note that the HMRC only requires mobile network operators to account to them at the start of the consumers' contract for VAT on the device element. Operators account for VAT on the airtime plan on a monthly basis based upon the monthly price and any additional services and the associated refreshed allowances.

The total cost commitment of multi-month telecommunications contracts cannot reasonably be calculated in advance

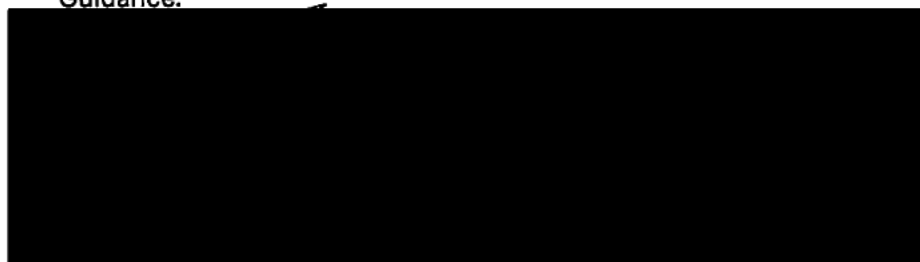
(f) Limitations resulting from means of communication and steps taken to overcome them

27. We have explained above why it is not possible in the context of multi-month telecommunications contracts, to provide all the information which is mandated to be provided to consumers by Ofcom (and EECC) and the FCA, in an advertisement. The variable elements of any particular arrangement as well as the pre and post contractual information make this impossible. The telecoms sector is heavily regulated and Ofcom ensures that customers are provided with full information in the contracting process. This information is provided to consumer by other means prior to them entering into any contract.

Consumers cannot be provided with all required information in an advertisement, which they are provided with in other specified ways prior to purchase.

D. Conclusion & next steps

28. We trust that the information provided in this letter is helpful, in particular in providing additional background and context to the advertising of multi-month telecommunications contracts.
29. Given our serious concerns in relation to this matter we ask that you carefully consider the points raised in this and UK Mobile's correspondence. Please confirm within seven days of the date of this letter (i.e. by 7th February 2025) that you will reconsider the aspects of the Guidance in issue, at least in relation to their potential application to the telecommunications sector, and provide comfort on the concerns raised.
30. We would be happy to discuss the points arising from this correspondence with you at your convenience, respond to any queries you may have, or provide additional information or support as may be helpful - including with proposed revisions to the wording of paragraph 9.17 of the Guidance.



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