Response to CMA consultation on consumer price transparency and misleading market practices under the DMCC Act, 2024.

Section A – CMA Webinar on Price Transparency, 9 July 2025:

Slide 5:

The lengthy Consultation process, detailed information on CMA strategy, and encouragement of industry participation, along with CMA's graphic examples of compliant market practices, should be the basis for robust enforcement and ongoing evolution of the new regime.

The new regulatory environment must be flexible enough to meet new challenges such as Brain Computer Interface technologies, AI, subliminal marketing, behavioural marketing, consumer data analysis, and other digital marketing tools.

The proposed collaboration between the UK agencies of ASA, CMA and ICO should be referenced in the context of a new consumer protection era, as well as cross-border liaison with international regulators, in this digital age.

In my experience, the prospect of punitive financial penalties combined with personal liability for company directors and advisors, has a more powerful deterrent effect than the moral or ethical obligation to consumers.

While price transparency is a key focus in vindication of consumer rights, it may be worth mentioning for context the many other challenges that regulators also seek to address, such as greenwashing, data protection, competition law, misleading advertising, human rights, and corporate social responsibility.

Slide 7

In addition to the DMCC requirements, CMA should oblige companies to publish a compulsory 'price warning' graphic symbol to clearly notify consumers that the final price payable may differ /prices may be subject to change/ additional costs may be payable/ and that a full price breakdown (or estimate if unknown) will be provided before payment is requested.

This would provide a clear and unambiguous notice to consumers that a composite or 'floating' price applies to the promoted goods or services, and a signal that the headline price may not be the final price, however a full price breakdown will be provided before final payment is requested.

Conversely, if a price is all-inclusive, and all applicable charges are already included in the headline price, this should be clearly stated (with an appropriate graphic), along with a breakdown distinguishing between mandatory (taxes and fees) and optional components (e.g. gratuities, beverages, upgrades) etc.

This extra layer of consumer protection is analogous to the ‘health warning’ on cigarette packets, or the warning graphics featured on e.g. packaging of medicinal products, domestic cleaning agents, food packaging, or motor vehicles.

Display of a graphic symbol should also be required featured where companies apply ‘dynamic pricing’ to their products or services (such as travel operators, taxis, event ticket sellers, and hospitality providers). An explanation of the algorithm or formula applied to such “surge pricing” should be displayed, to ensure price fairness and transparency.

Slide 8

More consideration should be given to CMA monitoring and enforcement measures applicable to offences under DMCC and relevant UCP provisions.

For example, will CMA use AI to monitor marketing and pricing practices? Also, will individual consumers be entitled to make a complaint, as seen in the existing ASA enforcement system, or is a class action required to prosecute multiple or serial offenders?

CMA should provide information about the criteria applicable to the imposition of penalties, as well as any aggravating or mitigating factors that may be considered.

This information is helpful to in-house legal advisors and other stakeholders (e.g. marketing agencies and revenue management departments) when advising senior managers or directors about price promotions.

Slide 12

In the travel industry, should all ‘per-transaction’ charges be disclosed to consumers?

For instance, package tour operators, cruise lines, hotels or airlines often incentivise agents and re-sellers with enhanced sales commissions / free gifts / promotional bonuses / loyalty program points, or other benefits (monetary or in-kind), in return for promoting certain products to retail customers.

Travel companies sometimes include the cost of these agent benefits in the retail price paid by the consumer, or may budget for the relevant incentive programme in an annual marketing budget, but in many cases these incentives lead to a distortion of fair competition, a conflict of interest for agents or resellers, and /or an inflated price to the retail consumer who purchases the promoted product.

I submit that details all such monetary incentives (or at least their existence) should be disclosed to consumers, in addition to any mandatory charges such as tourist taxes or landing fees, so that consumers may consider alternative products, or make an informed decision to purchase the product.

I also suggest the CMA should consider placing an obligation on travel company sellers to inform consumers that a lower price for the same or an equivalent product (e.g. a cruise to Iceland) may be available elsewhere in the market, at the time of purchase.

This is tacitly admitted by travel company who offer misleading ‘Best Price Guarantee’ that are subject to complex terms and conditions, and do not offer a full refund to qualifying consumers, but only a voucher for the fare difference.

Cancellation, administration and change fees

I submit that it should be mandatory for travel companies to clearly notify consumers prior to purchase that they are entitled to a full refund of all mandatory taxes and fees (as well as pre-paid gratuities) in the event of cancellation by either party to a travel or transport contract.

While a statutory obligation in this regard already exists under the Package Travel Regulations, 2018, and the UPC (and contract law) provides for consumer refunds, it may also be helpful to require all sellers of B2C goods and services to provide such information clearly prior to purchase.

In the travel industry, a cancellation fee or administration fee may apply to cancellations regardless of the reason. These charges may be a fixed per person fee, or maybe a total fee based on the number of passengers and the time of cancellation.

This notice requirement would be in addition to the rather arcane statutory ‘Passenger Rights’ notice and would be analogous to the cancellation charges in the telecoms and other subscription markets.

In many cases, the lengthy terms and conditions that apply to purchase of a cruise or a package holiday are simply too long and complex to be understood by a consumer, including pricing information.

Slide 13

The guidance suggests that “full delivery fee” should be included in the price paid if there’s a minimum spend to qualify for free delivery. This seems harsh on the provider, especially if such a minimum spend requirement is clearly notified to consumers.

Slide 15

Regarding the illustration showing, “tickets from £17-£26”, ASA CAP Code specifies that there must be a ‘significant number’ of the featured product available at the best price for such an ad to be published. Also, there is no mention in the advertisement of, “while stocks last”) or any limited time or supply warning.

These notices are ASA requirements but are also relevant to price transparency.

Slide 17 Bullet Point 3:

Surely APR, percentage rate, repayment of instalments should be itemised? Also, the euro - dollar conversion rates.

Slide 18:

This does not include taxes and fees itemised.

Also, what about any cancellation fees, fuel surcharge, etc. Where are they specified?

Section B – CMA Consultation Document

1.8— What does “owing to the nature of the product” mean? Would and example be food items and unit pricing?

1.15 – Prices can also be misleading due to material omissions.

1.17 companies who ignore the examples of compliance given, should be considered as an aggravated offence, given the availability of information and exemplary materials from CMA.

Section C – CA209 document

Summary:

Page 4:

What is meant by "informed decision/information"? Is omission of any price information at all, also misleading? Or is such general advertising not considered an invitation to treat?

Is telling the consumer that they can reclaim taxes and or fees/gratuities necessary information? In other words, is omission of this information misleading?

Page 3:

Should the phrase "invitation to purchase" have a qualitative aspect, for example regarding the graphics, font, position, medium, content, as well as the type, nature or nature of a product or service, for example luxury item, cruise package holiday, sports equipment, software and hardware, or food?

I would submit that the above notice requirement is not just a matter for ASA which only deals with advertisements.

The type and content of an 'Invitation to purchase' can take many forms, for example on social media, email broadcast, advertising, competitions, sponsorships and so on.

Invitation to purchase

Page 7:

What about accessibility, capacity to enter a contract, and other important information that may be difficult for consumers to understand?

2.2 – why not include billboards, hoardings, geolocation, BCI, AI, WhatsApp, radio and podcast, or is the intention to keep the definition of "invitation to purchase" as general as possible?

2.7 -What about sports sponsorships and sports equipment such as football jerseys? Can these be considered as invitations to treat in certain circumstances?

2.8 – what are examples of this? Is this ever okay to omit prices completely?

Pricing information.

Page 12:

3.12 Does this mean that by clicking “buy now “or “reserve” all the offer information must be repeated, at the ‘invitation to purchase’ stage, or when a consumer is directed to the booking page / shopping basket?

3.16 - What (if any) consideration has been given by CMA to the prominence, get-up, size, appearance, and visual presentation of the relevant pricing information?

Also, what about the forum e.g. social media, broadcast media, cinema, SMS, live sports, and others, as well as the pricing, to determine the effect on the average consumer? This should be an important consideration.

Also, quoting the value of a competition prize, or promotional savings (e.g. “worth £5000” or “save up to $800”, or Buy One Get One Free offers? These are often misleading and can be a distortion of the true price of a purchased product.

Page 16:

Examples show that all mandatory pricing must be included in the headline price bracket for example taxes, fees, and transfers if applicable, gratuities et cetera. But what about single supplements and gratuities that are often presented as mandatory and charged without request, or added back on to a client bill on a cruise?

Also, if “gratuities included “in the price, surely the guest is entitled to a breakdown of the total price, and be informed of the right to decline such a service as gratuities or transfers if they do not want them? In such cases, they should be offered a price deduction or a refund.

CMA might consider making it compulsory for travel agents to specify the commission they gain from the tour operator bracket (if any) for selling the tour operators holiday package. Although such commission may be included in the transaction price, such commissions may also be added to the sale price by the tour operator to maintain a competitive price and prevent the travel agent from marking their own package price up (or discounting the tour operators RRP).

In such cases, the guest should not have to bear the cost of such commission, and at least should be informed, as in the insurance industry if the travel agent is receiving an incentive to sell to tour operations product instead of another product

An example of this practice occurs in the travel insurance and other retail insurance products where brokers or introducer are required to disclose their commissions before recommending or suggesting a particular insurer’s product.

END.

Colman Candy, Solicitor

21 August 2025.