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Chartered Trading Standards Institute (CTSI) response to the consultation on price transparency guidance

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 Do you have any comments on the structure or clarity of the Draft Guidance?

CTSI believe that the guidance is structured well, and the wording is clear to ensure businesses will understand the requirements in principle. It is helpful to have written illustrative examples to clarify the concepts. However, we feel that the guidance is exceptionally long and, in places, hard to read with too many examples. For business guidance to be useful and practical, it needs to be as short as possible, and easy to understand. With guidance of over 40 pages, some of which is rather complex, we are concerned that the average trader will not read it or, potentially, be able to understand it.

We also think that it must be made clear that this is *guidance only* to help businesses to understand the specific requirements relating to 'invitation to purchase' in the Digital Markets, Competition and Consumers Act 2024. Ultimately traders have to comply with what the law says, and the guidance should be helping them to do this; the way the guidance is worded appears to imply that traders *must* follow it to the letter.

As will be seen from this consultation response, we feel that some of the guidance is contradictory and does not aid compliance.

On a more specific point, we have noted that the majority of illustrated examples relate to online sales and think it would assist businesses if there were more examples relating to high street retailers. We also think that app-based examples would be helpful, as we have had specific queries relating to the cost of parking on phone parking apps.

Q2. Do you have any comments about what an invitation to purchase is (Chapter 2)?

The explanation of what is meant by invitation to purchase is clear, and the examples are helpful. The definition of 'invitation to purchase' in s230(10) is given (and we would suggest the reference be given in a footnote) but we would suggest that the remainder of the definition about material information relating to price (i.e. s230(2)(b) and (c) and s230(4)) should also be given right at the beginning of the guidance. It is very important that traders know and have clarity on what the legislation states, and what the legal requirements are, and are not just reliant on suggestions as to how they can comply.

In addition, the guidance does not appear to explain or clarify the term 'material information'. Section 230 is only breached if an invitation to purchase 'omits material information'. Section 227(2) defines the definition of material information as being 'information the average consumer needs to take an informed transactional decision'. CTSI think it would be helpful for there to be some reference to the difference between information the average consumer *wants* and information the average consumer *needs.*

Q3. Do you have any comments about what needs to be included in an invitation to purchase (Chapter 3)? Is the guidance on when the presentation of prices might be misleading clear? Are there topics covered in this section that would benefit from further guidance? CTSI feel that the expression 'realistic, meaningful and attainable' is not particularly helpful, although we note that this is clarified later as 'a price at which most consumers would be able to purchase the product'. This term is not used in the legislation itself, and we are concerned that this implies that it is a legally recognised term. Further clarity would be welcomed on this, as we envisage this will generate a large number of business enquiries. In particular we are already receiving queries from businesses with regard to the use of 'from' prices and how they can be 'realistic, meaningful and attainable'

Paragraph 3.6 ends with the statement that a failure to include charges 'may be a misleading omission'; however, the guidance is in relation to 'invitation to purchase'. We would like clarification whether this terminology is intentional in this instance. We would suggest this could be clarified to say: 'Failure to do so may be a misleading omission as well as an omission of material information'.

The second example on page 10 talks about giving an 'indicative quote' to consumers for the cost of installing solar panels and including the costof scaffolding even though this may not be required. The term 'indictive quote' is not necessarily one which would be recognised by businesses or consumers, and this example may cause confusion by thinking the quote is being given to a specific consumer, in which case the price given should be accurate. We would suggest this example could be explained better by clarifying that this general price is given in an advertisement, rather than being a specific quotation given to a specific consumer, if that is what is intended by this example. Due to the wide disparity in the cost of scaffolding across the UK and the different costs relating to different property types, this makes it difficult to establish an indicative price. For this reason, we suggest it should be replaced with a different example.

We do not think the example relating to zoo tickets is particularly helpful. A child ticket is £12, and children could be on a coach trip where there are many children but few adults. If the guidance is going to say this is likely to be misleading, we think there should be some guidance as to how the indication should be given e.g. “Child price £12. Children under 10 years of age must be accompanied by an adult (ticket price £25)”. It is important that the guidance is an aid to compliance.

With the ‘drip pricing’ example, it would be helpful if an example could be given for parking apps on mobile phones, as often a ‘convenience charge’ is added right at the end of the transaction.

Q4. Do you have any comments about the core principles for what the ‘total price’ must include and what businesses need to do if it is not reasonably possible to calculate it (Chapter 4)? Are there topics covered in this section that would benefit from further guidance?

We feel that the principles as to what constitutes a mandatory charge are helpful, but that this chapter would benefit with more examples as to how businesses should indicate mandatory prices where they cannot reasonably be calculated in advance. For example, with the purchase of property there are numerous mandatory charges that the purchaser has to pay, such as stamp duty and land registry charges. Should these charges be included, and if so, how? We feel that giving examples relating to estate agency and property would be helpful.

We do not believe that Paragraph 4.6 is helpful, as it appears to suggest that retailers can charge extra for payment by credit card, whereas legally this is not permitted.

We would suggest that Paragraph 4.7 includes reference to the Price Marking Order 2004, as it is this legislation that required the inclusion of VAT in all price indications for goods which are, or may be, for sale to the consumer.

Q5. Do you have any comments about the guidance on specific types of charges and pricing (Chapter 5)? In particular:

a. Is the guidance on how businesses should present ‘per-transaction charges’ such as administration or booking fees in early-stage advertising and on traders’ websites respectively clear? Is it clear when delivery fees will be mandatory? Are there additional means of providing this information to consumers that businesses may be able to use to comply with the UCP provisions, particularly in the context of how the prices are presented on a trader’s website/app, that the CMA should consider providing guidance on?

As previously indicated, the guidance is predominantly weighted towards online retailers. We would suggest that more examples be given which cover shops, restaurants, newspapers and telephone sales. The use of the term ‘early-stage advertising’ is not considered to be helpful, as it appears to be differentiating between different types of invitation to purchase.

Whilst we accept that the total price should include all one-off, 'per-transaction' mandatory fees, we feel that the inflexibility of the guidance may cause issues for businesses with regard to compliance and may actually cause more confusion to consumers. Whilst the 'total price' should include all non-optional fees, it is felt that some flexibility in relation to 'per-transaction fees' would aid clarity. Often consumers want to know how much a product costs, and how much are the additional charges, so that they can make valid comparisons between traders and products.

For example, when ordering on a food delivery app (e.g. JustEat), if the total price were to include delivery, with no breakdown required of the price of the food plus the price of delivery, the consumer would not be making their transactional decision based on all the material information. With the total price broken down into food cost, plus delivery cost, the consumer might decide to collect the food themselves. A failure to do so could potentially be a misleading omission.

Including a prominent statement of the cost of the one-off fee adjacent to, and with equal prominence to, the headline price would mean consumers would know that this price is not applicable to each ticket price. It would also help consumers to understand how much they are actually paying for the product, and how much is the additional cost (which may not go to the trader themselves).

The particular example being considered here is ticket prices for theatres as the booking fee does not increase with the number of tickets.It would be clear if it were given alongside the headline price e.g. "All bookings are subject to a £2.50 booking fee", rather than including it in each ticket price, as the fee is only payable once. It is not feasible for all traders to have a floating basket or dynamic basket with the booking fee included.

The examples in Figures 5 and 6 gives the booking fee separate to the headline price, which appears to somewhat contradict the written guidance, particularly as the 'Add to basket' price in Figure 5 is far less prominent than the headline price. We feel that giving a prominent statement of the per transaction fee adjacent to the item price is clear and meaningful and would assist both businesses and consumers in understanding the total amount payable and how it is determined.

b. Is the guidance on how businesses should present 'delivery fees' in early-stage advertising and on traders' websites/apps respectively clear? Is it clear when delivery fees will be mandatory? As above, are there other ways of providing this information to consumers that the CMA should consider providing guidance on?

It would be helpful to give a specific example where delivery is free over a certain amount (e.g. in 5.18), as it is challenging to see how this could be indicated where a 'floating basket' is not an option.

An example regarding compulsory delivery which varies with distance (for shops particularly) would also be helpful as, particularly with furniture retailers, this is a specific issue. Currently delivery costs are generally indicated at the place where payment is made, with an indication of how this cost increases with distance. The guidance suggests that the price of the item (e.g. a sofa) should be inclusive of the lowest delivery. However, we suggest that giving delivery separately (but with equal prominence) to the price would seem to be a clearer alternative to allow consumers to understand the price breakdown, and to make valid price comparisons with other traders/products and to assist them when making their transactional decision. If the delivery cost were included in the price of each item on display, this would cause confusion, if the delivery charge only must be paid once regardless of the number of items.

The examples in relation to 'Lawfully presented delivery charges' allow the flat delivery fee 'to be clearly explained alongside the headline prices of the individual products'. This would be the preferred option but appears to contradict the earlier advice that the headline price must include all non-optional fees such as delivery. The guidance therefore requires further clarity to avoid the perceived contradiction with regard to 'invitation to purchase'. CTSI would be willing to assist with amending the guidance to bring that clarity.

c. Is the guidance on how businesses should present 'local charges and taxes' in early-stage advertising and on traders' websites/apps respectively clear? This guidance reflects the guidance that the CMA has previously provided in relation to car rental and online hotel booking, is it helpful for businesses to have this consolidated in the Draft Guidance?

The issue of local charges and taxes is one which has generated a lot of concern within the travel industry. The examples are helpful, but it would be valuable to show the initial prices given to consumers as well as the final payment page for example 8. The final payment page is clear, but how the initial prices should be given, is less so.

Where there is a mandatory fee that must be paid to the hotel, but the payment is not made to the trader, we believe it would be clearer for this additional fee to be stated separately in the price. We do not believe it aids clarity for the local fees to be calculated into GBP and added in, only to be removed later to allow the consumer to pay. The most important thing is that consumers know how much they will be paying the trader they are dealing with immediately, and also know that additional fees that have to be paid in resort and how much these fees will be.

It would be helpful to include a mention of the cost of visas or the ESTA and how these should be mentioned. This is of particular relevance at the moment as new fees are currently in the process of being implemented for UK residents visiting EU countries, but the implementation dates and amounts are yet to be determined and may well vary. Consumers need to know that such fees will be required, but they cannot be included in the 'total price'.

d. Is the guidance on how businesses should present 'monthly pricing' clear?

This guidance is clear on this issue, but it would appear from the legislation and other guidance that the total price due for a fixed term contract should be given and not just the amount per month. In the example given at the bottom of page 40, as the contract is for 12 months' membership it would have been expected that the total cost of £360 would be the total cost required under the Act as the price for the year. Obviously, the situation is different for rolling contracts.

e. Are there other types of charges or pricing that the CMA should consider providing specific guidance on?

As highlighted as part of this response, we believe that in places the guidance is unnecessarily complex and insufficiently clear. CTSI would be willing to assist with amending the guidance to bring that clarity.

Q6. Do you have any comments on the illustrative examples provided in the Draft Guidance? Are there any areas where you think additional examples could usefully be reflected in the Draft Guidance?

The illustrative examples are helpful in explaining how the suggestions would work in practice, although we have highlighted those where further clarity might be useful, and we believe there are far too many examples provided.

As indicated at the foot of page 20, the examples given just cover material information in relation to price, and not all the other material information which must be included. It would be interesting to have an example where all the required information is included alongside the pricing information as this could potentially lead to the information being 'unclear' and therefore a misleading omission.

Q7. Do you have any other comments on topics not covered by the specific questions above

We feel that some of the advice, guidance and examples appear contradictory and may cause confusion to businesses; these areas of concern have been highlighted in the consultation response. We have spoken to businesses who feel that the guidance contains too much, repetitive, information and is ‘impenetrable’ in places. CTSI would be willing to assist with amending the guidance to bring that clarity.