

Shoosmiths LLP response to the CMA's consultation on the draft price transparency guidance (CMA209con)

1. Introduction

We welcome this opportunity to respond to the CMA's consultation on its draft guidance on price transparency (CMA209con) ("**Draft Guidance**") under the Digital Markets, Competition and Consumers Act 2024 ("**DMCC Act**").

The Draft Guidance is a practical starting point for businesses, providing detailed examples of how to comply with the DMCC Act, which promote consistency and facilitate understanding among stakeholders.

This response outlines specific concerns and questions regarding the Draft Guidance and its practical application, including areas we believe would benefit from further clarification - such as its applicability to a wider range of operational models and its interaction with accessibility requirements for websites, applications, and other digital platforms. We also reflect on the original intention of the DMCC Act and explore how a balance might be struck between this and the practical consequences of the Draft Guidance.

Where appropriate, we propose alternative compliance approaches based on our experience working with clients across various industries and sectors. These alternatives aim to balance the interests of traders and consumers, which we believe will promote broader uptake and ultimately support the CMA's objectives in a more inclusive and practical manner.

2. Responses

Question 1: Do you have any comments on the structure or clarity of the Draft Guidance?

We have no comments on the structure or clarity of the Draft Guidance. Our initial impression is that the guidance is generally clear, well-structured, and digestible.

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

We have no comments on this section.

Question 3: 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?

We have no comments on this section.

Question 4: 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?

The Draft Guidance would benefit from greater clarity and examples on when it is acceptable to conclude that the total price cannot reasonably be calculated in advance. While references to pricing per kilogram or litre are useful, the principle of "cannot reasonably be calculated in advance" is subjective and context-dependent, leaving uncertainty about its application in scenarios such as resort fees, delivery charges, service fees, or other costs that depend on customer input or basket value ("**Variable Fees**"). In many cases, pricing becomes clear only once variables such as season, number and age of guests, or total order value are known - often at later stages of the ordering process rather

than “in advance”. This practical reality appears misaligned with the Draft Guidance, and it remains unclear whether traders retain discretion to determine what can and cannot reasonably be calculated in advance.

We recommend that the CMA provide clearer guidance on when traders may rely on the principle that the “total price cannot reasonably be calculated in advance,” and when this would not be sufficient for compliance. Where it can be used, the CMA should also clarify how compliance can be achieved in practice - for example, whether tooltips or explanatory text alongside the price would be acceptable, and what information must be disclosed. Additional illustrative examples beyond the current limited ones would be valuable, particularly for dynamic scenarios where costs depend on customer input or variables such as basket value. If, however, the CMA’s position is that such fees are reasonably possible to calculate and must therefore be presented upfront, we would have further concerns that require consideration - as set out below.

Many of the compliance mechanisms suggested in the Draft Guidance, such as dynamic or floating baskets and real-time price updates (to be used in the mid-stage of the order journey where fees cannot be shown earlier), require complex development work that may not be feasible for all traders. These solutions often demand substantial investment in technical infrastructure, which can be particularly challenging for smaller businesses or those operating on third-party platforms with limited customisation capabilities. Moreover, such implementations may inadvertently compromise accessibility for users with disabilities, especially where dynamic content is not fully compatible with assistive technologies. They also risk creating information overload, presenting customers with frequent or complex updates that may be confusing and make it unclear what they are actually being asked to pay at different stages of the purchasing journey. It is therefore important to consider proportionate alternatives that prevent traders from being unfairly burdened by budget or technical constraints, while still advancing the CMA’s goal of greater price transparency.

To address these issues, if the CMA interprets “cannot reasonably be calculated in advance” narrowly, excluding Variable Fees and similar cases it deems calculable upfront, we propose a tiered compliance framework. The use of floating or dynamic baskets could represent “gold standard” compliance, while a “silver standard” compliance framework (outlined below) would provide an alternative for businesses of all sizes, including those with more limited resources or lower technical capabilities. This alternative standard could use simplified, accessibility-compliant approaches that still uphold the core principles of price transparency and consumer protection.

A “silver standard” compliance framework should reflect a layered and consistent messaging approach regarding mandatory fees to aid transparency throughout the consumer journey, potentially including a combination of the following:

- A banner or notice on the landing page to alert consumers and explain the mandatory pricing (e.g. Delivery fee of £3.99 for orders under £50).
- Prominent presentation of relevant mandatory pricing details on product pages, with links to further pricing information (e.g. a hyperlink next to the product price “Delivery fee”).
- The use of mandatory pricing disclosures via footer links to ensure the information remains visible, regardless of the user’s entry point on the site (e.g. “Delivery fee” hyperlink).
- Itemised mandatory charges and pricing components at checkout.

This approach balances practicality with consumer protection and provides a workable benchmark for businesses that may not have the resources or technical capabilities to meet the “gold standard” but are committed to meaningful transparency.

Further illustrative examples would be helpful to demonstrate compliance expectations at each stage of the customer journey - from early-stage marketing materials such as emails and billboards, through to the order process itself. We welcome the opportunity to review relevant examples of how compliance with the Draft Guidance appears throughout the customer journey. It is our opinion that the level of detail required in each scenario may reasonably vary depending on the stage, particularly where key

information is not yet available to the trader, or the final value of the consumer's basket is unascertainable.

Finally, we recommend clarifying the use of terminology - specifically, "headline price" and "total price" - to avoid confusion and promote consistency. In our view, both terms broadly refer to the same concept: the price presented to the customer inclusive of all legally required charges. Further clarification on whether these terms convey different concepts or compliance obligations would be helpful - or the elimination of one and the consistent use of the other across the board.

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

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?

Many traders apply booking fees on a per-booking basis rather than per person, even when other charges are calculated per person. In these cases, showing the booking fee on a per-person basis within the total price would be neither meaningful nor transparent. A more suitable approach would be to present the fee through a dynamic or floating basket, or via our "silver standard" compliance framework above.

Service charges raise similar issues. They are often linked to basket value, meaning they cannot always be calculated upfront and may vary as consumers add items. They can also consist of multiple figures or percentages, which are difficult to present with equal prominence. While the Draft Guidance appears to suggest including these charges in the total price, we believe it would again be more appropriate to present them through a dynamic or floating basket, or via our "silver standard" compliance framework above.

With the above in mind, for both booking fees and service charges, we believe that it is also important to illustrate what compliance should look like at the different phases of the customer journey in the context of charges and booking fees across a variety of sectors. In our view, at the early stage, such as in initial promotional content or when a user first visits a website with limited engagement, a general disclaimer like "service charges or booking fees may apply," along with a link to further details, should be sufficient. Then, as the customer progresses through the journey and the trader begins to gather relevant information - including but not limited to factors such as the number of people or bookings - more precise pricing details should be introduced to ensure transparency and informed decision-making.

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?

The Draft Guidance does not fully recognise that delivery fees are not always mandatory - they can be waived or vary based on factors such as loyalty scheme membership or basket value. It currently treats delivery fees like hidden ticketing charges, even though delivery costs are a familiar concept and consumers generally know where to find this information.

We therefore recommend that the Draft Guidance be expanded to include further consideration and clarification in relation to delivery fees. This should encompass scenarios such as click-and-collect options or instances where free delivery is unlocked based on basket value - both of which remain grey areas under the Draft Guidance.

We believe it would again be more appropriate to present delivery fees in accordance with our suggested “silver standard” compliance framework. This approach would enable proportionate compliance pathways that reflect the diversity of business models and operational limitations, while still aligning with the CMA’s overarching objective of safeguarding consumers.

In a similar vein, we also believe it is essential for the Draft Guidance to distinguish between the different stages of the customer journey and offer illustrative examples. For example, at the initial stage - such as in early marketing materials or upon first landing on a website with minimal user interaction - a general statement such as “delivery fees may apply,” accompanied by a link to more detailed information, should be considered sufficient. As the customer journey progresses and the trader begins to receive the necessary information to determine delivery charges or the customer’s preferred delivery method (e.g. home delivery versus click and collect), more specific pricing information can be provided.

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 Draft Guidance suggests that city/tourism tax must be included in the total price. Many local charges are dependent on information provided by the customer during the customer journey. Further, such charges are frequently specified solely in the local currency and are often payable directly to the accommodation provider. It may cause confusion to include details in the total price (whether expressed in the local currency or otherwise), as neither figure is likely to accurately represent the fees payable due to fluctuations in exchange rates at the time.

As above, we query whether a calculation could be used in this context, as total price “cannot reasonably be calculated in advance” at the very start of the customer journey before the required information is entered (for example, different countries calculate their city/tourism tax based on number of guests, age, season, etc).

To the extent that the CMA considers it reasonable to calculate city/tourism tax in advance, we raise concerns. Whilst we acknowledge that some traders’ websites currently allow you to enter all the necessary information from the outset and present you with a total price in advance, we again highlight the cost and time required to develop and implement such functionality on a website.

As mentioned earlier, we advocate for the introduction of a “silver standard” compliance framework to support traders who encounter technical or financial limitations. In scenarios involving city/tourism tax - where embedding local charges and taxes within the total price may not be practical - a “silver standard” compliance framework might involve consistent messaging throughout the customer journey about the possible application of such taxes and how they are calculated. This should be complemented by clear navigation and links to relevant details. Supporting elements such as banners and footers can help ensure that this information remains visible, regardless of where the user lands on the site.

Once again, we want to emphasise that we consider it important to recognise the distinct phases within the customer journey and for the Draft Guidance to illustrate what compliance may look like at each stage of the journey. At the outset - such as when engaging with early-stage marketing content or arriving on a website with limited interaction - a broad notice like “city/tourist taxes may apply,” paired with a link to further details, should, in our opinion, be adequate. As the journey progresses and the trader begins to gather the necessary information to calculate the city/tourism tax, it becomes appropriate to offer more detailed pricing information.

To answer the latter half of the question, yes - it would be useful for businesses to have the car rental and online hotel booking guidance consolidated into the Draft Guidance, as there is significant overlap.

Is the guidance on how businesses should present ‘monthly pricing’ clear?

The Draft Guidance currently lacks clarity regarding the appropriate presentation of delivery fees within the context of subscription models. To support consistent and transparent application, further detail and practical illustrative examples should be provided on how such fees ought to be disclosed throughout the customer journey. While the general principles outlined for delivery fee presentation may offer a useful starting point, they do not fully address the nuances specific to subscriptions.

Pre-empting any argument that many subscription services routinely ship and can reasonably calculate applicable delivery fees based on the price of goods, it is important to recognise that there are nuances where this is not accurate and delivery fees cannot be determined from the outset. For example, in the common model of meal subscription boxes, delivery fees may vary depending on whether the customer is new or existing, whether the contents and value of the box have been customised, or the level of membership held (e.g. a premium member may receive “free” shipping as part of their membership benefits).

Therefore, we recommend that the Draft Guidance be expanded to include illustrative examples tailored to subscription scenarios. These examples would help traders understand how to effectively communicate potential delivery costs - ensuring consumers are adequately informed at each stage of engagement.

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

Drawing on the key theme outlined above, we encourage the CMA to provide additional guidance on alternative approaches to compliance beyond those currently suggested in the Draft Guidance. While the examples provided are helpful, the methods proposed are not always feasible for the majority of traders. To foster engagement and avoid discouraging participation, it is important that traders are offered effective and practical next-best solutions - such as the “silver standard” compliance framework referenced throughout this response.

As a firm, we regularly engage with clients who express concerns about their ability to meet the standards set out in the Draft Guidance. We believe it is essential to empower traders by offering accessible compliance pathways that reflect the realities of their operational and technical constraints. Ultimately, this will help ensure that consumers benefit from improved price transparency across a broader spectrum of businesses and industries.

A more basic approach that still delivers meaningful transparency and a positive consumer experience - and is more likely to be adopted due to its lower cost and greater functional viability - should be viewed as a positive step. It aligns with the CMA’s overarching objective while promoting inclusivity and fairness in implementation.

It would also be beneficial for the CMA to provide further guidance on how this Draft Guidance interacts with marketplaces and other business models that are not as simplistic as the examples currently contained within the Draft Guidance.

Question 6: 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?

We wish to raise a concern regarding the limited practical guidance currently provided in the Draft Guidance on how compliance can be achieved across different media formats. In particular, formats with inherent space or time constraints - such as radio broadcasts, mobile applications, and social media platforms - pose unique challenges that are not adequately addressed.

While the Unfair Commercial Practices Guidance (CMA207) (“**UCP Guidance**”) offered general suggestions, such as the use of QR codes or hyperlinks, these were presented in broad terms and lack the specificity needed to give traders confidence in their implementation. Whilst we agree that a call to action - such as checking a website link or scanning a QR code - is likely the most effective way to address this, we had expected the Draft Guidance to expand on the brief reference made in the UCP Guidance. However, it does not. Without clear, practical examples tailored to each format, businesses may struggle to understand what constitutes compliant behaviour, especially where technical limitations or user experience considerations restrict the amount of information that can be presented.

We therefore respectfully urge the CMA to expand the Draft Guidance to include more detailed and format-specific examples of acceptable compliance approaches. Doing so would support traders in meeting their obligations effectively and consistently, while also ensuring that consumers benefit from meaningful transparency across all channels of engagement.

Question 7: Do you have any other comments on topics not covered by the specific questions above?

The Draft Guidance is unclear on how its requirements apply to online grocers or food retailers. In theory, mandatory fees - such as delivery charges, bag fees, or service fees - would need to be added to the price of each individual item. This approach would be counterintuitive and misleading, as these fees are applied to the order as a whole, not to individual products. Our “silver standard” compliance framework addresses this issue by providing a proportionate and transparent way to reflect these fees without misrepresenting item-level prices.