

CAA Consumer Panel response to the Department for Business and Trade consultation

“Smarter regulation: improving price transparency and product information for consumers”¹

October 2023

Display of pricing information

1. Traders are currently required to unit price certain items. Should traders be required to adopt consistent unit pricing, per kilogram or per litre, for comparable products that can be sold by weight or by volume?

No comment

2. If you answered ‘no’, please could you explain why.

No comment

3. Are there any products for which you think exceptions should be made, or continue to apply, for example herbs and food colourings are currently required to be provided in unit measurements of per 10 grams? If so, which ones and why?

No comment

4. Is there anything else you would like to add?

No comment

5. Are there examples of poor displays of pricing (for example, in relation to illegibility, ambiguity or proximity) that Government should consider when updating the PMO?

No comment

6. If you said ‘yes’, please can you provide more detail.

No comment

7. We intend to balance the PMO requirements on display of pricing, so they are useful to businesses without being overly prescriptive and burdensome. Do you have views on how we can ensure pricing information is clear to consumers?

No comment

¹ <https://www.gov.uk/government/consultations/smarter-regulation-improving-price-transparency-and-product-information-for-consumers>

8. Should the display of the promotional unit price be explicitly required for all products offered for sale to consumers on promotion, wherever practical e.g., where the same products in the same quantity are sold together on promotion?

No comment

9. Should the display of the promotional selling price be explicitly required for all products offered for sale to consumers on promotion?

10. Are there examples of items on promotion which should be excluded from unit pricing, such as 'meal deals'? Please provide detail on your answer.

No comment

11. Should the small shops exemptionⁱ continue to apply?

No comment

12. If you answered 'no', please can you explain why.

No comment

13. Are there other ways Government can clarify or improve the threshold used to determine the small shops exemption in the PMO?

No comment

14. Is there anything else regarding the PMO you would like to tell us?

No comment

15. To make it clearer to consumers, we propose that retailers should display the cost of the deposit separately, so consumers know how much money they will get back if they return the eligible item to a return point. Do you agree?

No comment

16. Should the displayed unit price be calculated exclusive of the deposit so that the price per unit of drink remains comparable?

No comment

17. If you answered 'no', could you please explain why.

No comment

Hidden fees and drip pricing

18. To what extent do you think current law protects consumers from any detriment that may be caused by drip pricing?

In the context of aviation, drip pricing occurs when consumers are shown an initial price for a flight (known as the base price or advertised price) while additional fees are revealed or dripped later in

the purchasing process. This is common practice in the aviation sector. Consumers might select flights with a lower base price and, due to the length of time it takes to complete the purchase process, often choose to complete the purchase despite dripped fees sometimes rendering the final price of the item greater than some alternatives. Airlines may therefore use drip pricing to encourage purchases and increase profits. Drip pricing may negatively impact consumer decision-making and satisfaction and cause consumer detriment. Drip pricing is estimated to cause UK consumers to spend an additional £0.6 to £3.5 billion online each year².

There is aviation specific legislation (Air Services Regulations - <https://www.legislation.gov.uk/eur/2008/1008>) that requires that the initial price displayed is inclusive of all taxes, fees and charges, that the advertised price is available, and that the flight can be booked at the advertised price.

Many consumers benefit from disaggregated pricing in aviation, and the addition of services and optional extras during the booking flow does not in itself cause harm, as long as the options are displayed transparently, a comparable cost is available early in the flow to help make the right purchasing decision and there are no high pressure sales techniques employed to incentivise the purchase of extra services when they are not necessary. The combination of sector specific legislation and general consumer law on commercial practices provides the means to tackle the problem where there is harm, though we believe the Civil Aviation Authority as regulator should have strengthened enforcement tools to tackle poor behaviour, including the ability to apply to the courts for financial penalties.

Stronger enforcement powers for sector specific regulators would be the most effective way to enable a fast and effective response to non-compliance.

19. Are there further steps the Government should take to better explain or promote these rules, to improve consumer protection?

We would like to see clarity on the detail that must be included by airlines in the base price given to consumers, with information available to consumers on which disaggregated costs will be charged later in the process. This should be provided early in the booking process before consumers commence the purchasing process, enabling easier price comparison across airlines.

20. Would an explicit requirement on traders to include all mandatory fixed fees in the up-front price be effective in reducing consumer detriment? Or would better guidance explaining the existing rules be more appropriate?

In line with aviation-specific legislation, mandatory fixed fees, such as airport charges and should be included automatically in the base price advertised by airlines.

21. Is the provision of mandatory variable fees a problem that Government should seek to address? Please explain the reasons for your answer.

As above, in line with aviation-specific legislation, mandatory variable fees, such as Air Passenger Duty should be, included automatically in the base price advertised by airlines.

² https://assets.publishing.service.gov.uk/media/650c011527d43b000d375a73/measures-to-address-drip-pricing_impact_assessment.pdf

22. Should traders be required to make clear the existence of mandatory variable fees, and how they will be calculated, when they display the price for a product? Or would better guidance explaining the existing rules be more appropriate?

We support the current position, which requires all mandatory taxes, fees and charges to be included in the advertised price for a ticket.

23. Are there any circumstances in which traders would not be able to inform consumers about the existence of mandatory variable fees and how they will be calculated at the time of providing them with the price of a product?

Not that we are aware of in aviation.

24. When should traders that provide optional fees for products present these to consumers in the purchasing process? Please explain the reasons for your answer.

Optional fees are highly relevant in relation to the aviation sector and information about optional fees should be clearly highlighted at the start of the booking process. The price of optional fees can vary significantly, and therefore a lack of price transparency and information at an early stage in the decision-making process may have a negative impact on consumers. Flight prices are often advertised in an eye-catching way with low headline prices to attract consumers. However, by the time optional fees such as seat selection, extra leg room and baggage have been added, the cost may have increased considerably. Taking into account the additional stages to book each element, the process of booking flights can become extremely time-consuming, and therefore having taken so much time going through the booking process with one airline, consumers may be less likely to want to repeat the process with a competitor if they find the price has increased significantly by the latter stages of the process.

Although the fees are optional, as they are dripped throughout the booking process, aviation consumers may perceive they are in fact mandatory as they must be paid by many consumers for flights to be usable or fit for purpose. One example would be long-haul flight tickets being sold without a luggage allowance, which is then charged as an optional fee later in the purchasing process, despite the fact that few if any passengers would travel long-haul without baggage.

Optional fees that are presented late in the purchasing process can cause additional consumer detriment, particularly where these optional fees must be paid by certain groups of consumers, for example families with children who need to sit together, or where there are fees that consumers expect to be included in the advertised price. Consumers are less likely to abandon the purchase when they discover additional fees later in the purchase process as they have already spent time making an initial decision informed by the flight's base price. This means that consumers may spend more money than they initially intended and can find it difficult to compare total prices across different providers.

25. Are there any types of optional fees that cannot be presented to consumers early in the purchasing process? If so, what are these, and why?

Optional fees in relation to aviation include the sale of travel insurance and car hire which are typically presented toward the end of the purchase process for flights and are avoidable for consumers who, where required, choose to purchase them with alternative suppliers.

26. Are there any other features of products or services that are presented as optional fees but are in practice unavoidable for most, or certain groups of consumers? For example, is it really optional, when buying airplane tickets for parents with young children to choose to sit together?

The example given is a key one, as families with small children have to sit together, not least for the comfort and safety of other passengers. The same applies to passengers with a disability who require a carer to travel with them in case of an emergency. There are instances when passengers with reduced mobility have had to pay extra fees to sit next to their carer, despite the fact that the airline requires them to travel with their carer.

27. In what circumstances might it be reasonable for traders to charge for features that are presented as optional but are in practice unavoidable for certain groups of consumers? What might the consequences be of any action to limit this practice?

We are not opposed to the disaggregation of charges, as this can benefit consumers who choose to purchase as few optional extras as possible in order to keep the price as low as possible. However, as airlines have different practices and charges are often not visible until quite late in the booking process, it can be very unclear to consumers whether they are going to have to pay charges that for them are not optional and, if so, how much they will be. This information could impact the initial choice of some consumers and it is therefore important for the information to be available at the start of the booking process to inform customer choices.

28. Should the law be strengthened to address optional dripped fees that are detrimental to consumers, or should guidance be produced for specific sectors that sets out how to provide optional fees in a way that is fair, transparent, and lawful? Please explain the reasons for your answer.

In the first instance, it would be useful for guidance to be produced that requires airlines to provide information about optional fees either at the start or very early in the booking process to reduce the likelihood of consumer detriment. This would increase the chance that consumers are able to make informed decisions when purchasing tickets and choose the most appropriate option for them, and increase price transparency. In addition, effective information produced by airlines explaining their approach to pricing would be beneficial for consumers so that they are able to understand better the impact of the step-by-step processes of optional prices used in the aviation sector.

In addition, there are concerns about the cost of some optional extras charged to passengers and guidance could be useful in advising in this area. There are a range of optional charges that are generally understood, and often perceived as reasonable value by consumers, including charges for baggage allowances and extra legroom, whereas other charges are not seen by consumers as reasonable or justified. One example of the latter, is the amount charged by airlines to print boarding passes at the airport.

Guidance could help resolve these issues and reduce the risk of consumer detriment, but if there was evidence that guidance had failed to have an impact or examples of poor behaviour were widespread, it may be necessary for Government to consider legislation at a later date.

29. Should any guidance that is produced on optional fees be targeted to specific sectors? If so, which sectors should guidance focus on?

Guidance should be developed for the aviation sector.

Fake reviews

30. Do you agree with the addition of the following commercial practices to Schedule 18 of the DMCC Bill?

- a) Submitting a fake review, or commissioning or incentivising any person to write and/or submit a fake review of goods or services.
- b) Offering or advertising to submit, commission or facilitate fake reviews.
- c) Misrepresenting reviews, or publishing or providing access to reviews of products and/or traders without: taking reasonable and proportionate steps to remove and prevent consumers from encountering fake reviews; taking reasonable and proportionate steps to prevent any other information presented on the platform that is determined or influenced by reviews from being false or in any way capable of misleading consumers.

No comment

31. Do you agree that adding the misrepresentation of consumer reviews in ways which are likely to mislead consumers to Schedule 18 of the DMCC is sufficient to prohibit traders from:

- Deleting or suppressing negative reviews;
- only publishing positive reviews;
- applying different weightings to reviews based on the source consumer;
- publishing or providing access to incentivised reviews that are not clearly labelled as such;
- disabling the consumer from changing default sorting options; and
- presenting reviews of a different product as relating to the product a consumer is considering (sometimes known as review hijacking, review merging, or catalogue abuse).

No comment

32. Do you agree that guidance should be published to help traders understand and comply with the proposed requirements concerning “reasonable and proportionate steps”? If so, what form should this guidance take?

No comment

33. What reasonable and proportionate steps do you consider traders should take to remove fake reviews and prevent consumers from encountering them?

No comment

34. What reasonable and proportionate steps should traders take to prevent any other information presented on the platform that is determined or influenced by reviews from misleading consumers?

No comment

35. Should traders in scope of these requirements be expected to:

- a) Have proactive detection processes in place to identify suspicious reviews;
- b) Have procedures for removing and preventing consumers from encountering fake reviews; and
- c) Sanction users and businesses in response to fake views.

No comment

36. Do you agree that some traders should also be expected to:

- a) have a process for assessing the risk that fake reviews will appear on their website;
- b) a reporting mechanism that allows people to report suspicious activity; and
- c) undertake regular evaluation of the effectiveness of these systems?

No comment

37. Are there any kinds of review that are (a) missing from the description above, or (b) that you think should not be in scope? If so, please explain why.

No comment

38. Do you think that the definition of fake review should require a consumer to have bought or used the relevant product?

No comment

39. Do you agree with the policy on incentivised reviews above? Are there any forms of incentivisation that would not be covered by it?

No comment

40. Should the proposed new banned practices on fake reviews be subject to criminal liability? If so, which? Please explain the reasons for your answer.

No comment

41. Are the current banned practices in Schedule 18 relevant? If no, please identify which you think are redundant and explain why?

No comment

42. Do any of the banned practices require updating or clarifying? If yes please elaborate which one, what in your view needs changed and why.

No comment

43. Are there any practices you think should be added to Schedule 18? If yes, please identify which and why?

No comment

Online Platforms

44. Which consumer harms are particularly prevalent and/or detrimental on online platforms?

No comment

45. What do you understand the requirements of professional diligence to require in practice from online platforms?

No comment

46. Are you aware of any examples of where the requirements of professional diligence have hampered innovation in the online platforms sector?

No comment

47. Are there particular practices of online platforms where the application of the professional diligence requirements is uncertain?

No comment

48. How should best practice for complying with the requirements of professional diligence for online platforms be set out and communicated?

No comment

49. Is the current definition of professional diligence appropriate for regulating online platforms? If not, how do you consider it could be improved?

No comment

Protection from unfair trading: further issues

50. Should the Government add further commercial practices that are unfair under Part 4, Chapter 1 to the list of prohibited practices which attract private rights of redress?

Please explain your answer.

No comment

Online interface orders

51. Should the power to make applications to the court for online interface and interim online interface orders under Part 3 of the Digital Markets, Competition and Consumers Bill be extended to additional enforcers (listed in clause 144 of the DMCC bill)?

No comment

52. In what circumstances do you expect this power to be used by non-CMA enforcers if it is so extended?

No comment

53. Are there any downsides to extending this application power to additional enforcers, provided the decision to make online interface and interim online interface orders will continue to rest with the court?

No comment

54. Should either or both public designated enforcers and private designated enforcers, as defined in clause 144 of the DMCC Bill, be empowered to seek online interface and interim online interface orders from the court?

No comment

55. Please explain your answer to the question above.

No comment

ⁱ See Article 1(2) PMO 2004 which defines relevant floor area as: “in relation to a shop means the internal floor area of the shop excluding any area not used for the retail sale of products or for the display of such products for retail sale.”