Consultation on Improving Price Transparency and Product Information for Consumers

Response from Citizens Advice

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Introduction

The Citizens Advice Consumer Service provides practical and impartial advice to help people resolve issues relating to consumer law. The service receives around 3400 contacts a day, giving us unique insights into the kinds of consumer issues that affect people every day, including issues related to pricing transparency and drip-pricing.

Our own data shows that poor practice around pricing transparency and drip pricing can result in consumers spending more money than they expect for products and services. But it is also important to note that these practices stand to affect many more consumers than those who will come forward for help or advice. Indeed, these practices can fall under the radar, meaning people may not even notice when they have suffered financial detriment.

Pricing transparency is integral for ensuring that people are able to identify products and services that offer them good value, and can effectively shop around between different suppliers. Against the backdrop of cost of living pressures, where families are looking for every opportunity to reduce their household expenses, pricing transparency is even more important. We are, therefore, pleased to see the Department for Business and Trade's consultation on Improving Price Transparency and Product Information for Consumers.

We support measures that will improve price transparency, including requiring unit price to be displayed alongside promotional offers. We also support measures to reduce the detrimental impact posed by drip-pricing. Where fees are mandatory and unavoidable we believe these should be incorporated into headline costs, to make it easier for consumers to compare costs. We have also set out a suggested framework approach to help firms determine what items ought to be included in headline costs and what could be considered an additional or optional cost. This is set out In our response to Question 20.

More generally, we are also concerned about how design features can be used to exploit behavioural biases, which can result in consumers paying more than they need to for products or services. Drip pricing is just one example of such practices, but there are many other design features that can result in people paying more for products that do not feature in this consultation. This includes the use of default settings, settings that automatically enrol people into rolling contracts, countdown timers and scarcity claims – amongst others. Where deployed without the best interests of consumers in mind, these tactics can be used to trip people up. For example, our report *Tricks of the Trade: how online customer journeys create consumer harm and what to do about* found that more than two in five people (41%) think websites often make it too easy to make the wrong choice. This report explored research and examples from behavioural economics and impactful regulatory interventions that show how the design of online shopping is crucial in how consumers make choices.

Our recent report *Pushed to Purchase: Counting the cost of deceptive digital design in e-commerce* demonstrates that poor design is costing consumers significant amounts of money. In the last year 1 in 6 people reported that they had bought something that they didn't want, need or regret due to the design of the website. We estimate that in the last year alone this has cost consumers £2.1 billion.

It is clear that online design is not working for consumers.

There is an opportunity to use the Digital Markets, Competition and Consumers Bill to ensure that consumers are well protected from design harms. In our response to questions 45-49, we explain how this could be achieved through an expansion of the definition of professional diligence, to ensure that good faith incorporates design. This will better protect people from design practices that are resulting in harm now, as well as reducing the likelihood of new harms becoming entrenched in the future.

Responses to specific questions

Our response explores display of pricing information, drip pricing and professional diligence requirements for online platforms. Responses to specific questions are ordered as follows:

* Throughout clients' names have been changed for anonymity purposes

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?

It is our view that traders should adopt consistent unit pricing for comparable products. The display of final selling price and unit price is a vital tool for helping consumers compare products for value (unit price) while remaining within their budget (product price). However, approaches to unit pricing are not always consistent which can make it difficult for consumers to compare product prices. This leads to consumers being unable to act in an informed way about what products provide the best value for money, meaning people may be spending more than they would if they had clearer information. This is particularly worrying in the current context of the cost-of-living crisis, whereby many households are already struggling with the steep rise of grocery and other essential living costs.

We believe that traders should make the pricing comparison journey easy for consumers. When shopping for goods, understanding the pricing information should not be stressful, but a straight-forward and transparent process. Consumers should be able to quickly and easily identify what products are cost-effective, and this can only be achieved if traders adopt consistent unit pricing across comparable products. This is important both when consumers are comparing costs for similar products within the same shop, as well as across different shops. For example, it would be helpful if supermarkets were to use the same pricing benchmarks so that consumers can more easily shop around and make informed purchasing decisions.

What is an appropriate price unit may however differ according to circumstances. For example, whilst for many products kilograms or litres may offer helpful comparable benchmarks, for some products alternative standards may be more useful to consumers. For example, in the case of products like laundry tablets or laundry powder, it could be easier for consumers to compare prices if it was based on the price per wash rather than the weight of the product. Recommended standards should take into consideration how consumers use products and what units will best enable them to make informed decisions about what products offer them the best value for money. However, the most important aspect of consideration is that the approach to pricing is consistent both across brands and shops so that consumers can easily identify good value products.

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?

There are many examples of inconsistent unit pricing for varying items. Below we have drawn out examples from mystery shopping exercises, and from our own Consumer Service data.

Inconsistent approaches to pricing similar products

Through mystery shopping exercises we have identified inconsistent approaches to pricing of similar products. One such example is laundry tablets. For the same brand of non-bio laundry tablets, we saw inconsistent displays of pricing information on the same shelf. Below we have provided a mock-up based on a real example. In Image 1 the laundry tablets are priced according to the cost per laundry tablet (24p each), whereas in Image 2 the tablets are priced according to weight.

Image 1: Laundry tablets by unit cost

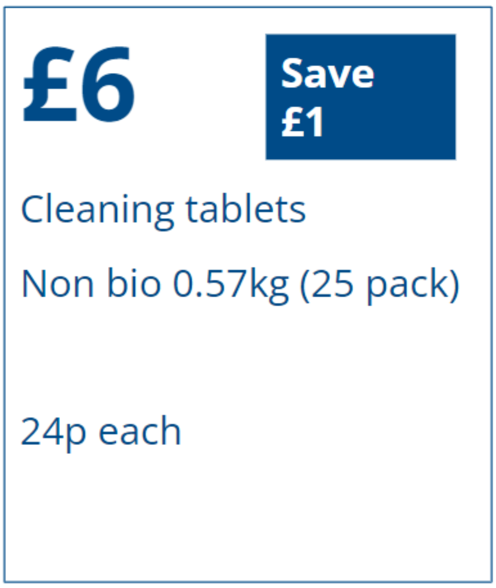
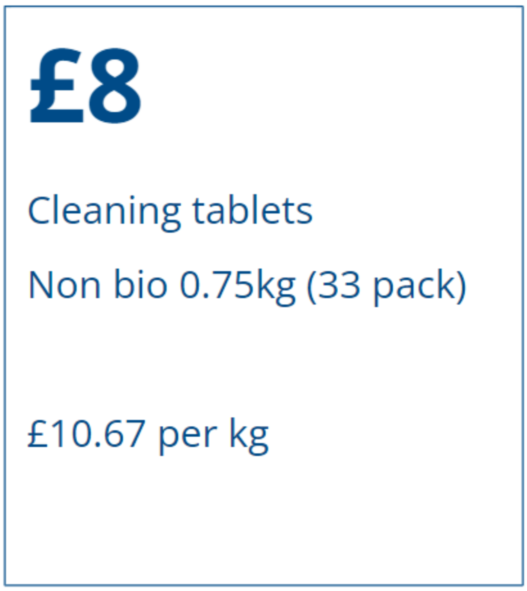


Image 2: Laundry tablets by weight



In the above example, the laundry tablets in Image 1 offer better value per unit (24p, compared to 32p), but this information is not readily displayed. This inconsistency in unit pricing makes it difficult for consumers to work out if it is cheaper to go for the tablets that are on offer, or to go for the seemingly more expensive option but nonetheless the option with more laundry tablets. In the below example we also found that specific terms were applied inconsistently. The example below is an illustration based on razor blades found for sale in the same supermarket and placed next to each other, both belonging to the same brand. But in the pricing information the word 'each' is used to mean two different things. For one it means per box and for the other it means per razor cartridge. Whilst these products are placed within the same proximity as each other, the complete difference in how the razor prices are displayed make it hard to understand which pack of razors are better value for money. Indeed the lack of consistency in units is so significant in this case that the unit pricing yields little value for consumers since they cannot use the information to make informed purchasing decisions in this example.

Image 3: Razor blades, priced by cartridge

Image 4: Razor blades, priced by box

Inconsistent approaches to pricing across supermarkets

In addition to inconsistent pricing across products within the same shop, there are also inconsistencies across shops, which may pose challenges for consumers who are looking to shop around more to respond to rising grocery prices.

Challenges related to price offers

Data from our consumer service also highlights instances where the display or implementation of price offers can result in confusion among consumers. Below is an examples of this:

- Alex* reported that he has experienced issues regarding unclear pricing when using a supermarket's online shopping platform. He found the online shopping prices unclear and complex to navigate. In particular, Alex reported that loyalty pricing (i.e. using the trader's reward scheme) in combination with the use of vouchers means that reductions are arbitrarily assigned to some of the items purchased. Alex complained that this made it difficult for him to prove that individual prices are incorrect and was overcharged during a recent shop as a result.

Other Issues

Within our Consumer Service data we also identified several cases where shelf prices were inconsistent with the price consumers were charged at the counter, as described in the examples below.

- Radhika* reported that she is frequently overcharged at their local convenience store, with the scanned prices at the till often more expensive than the price tags on the products. This has happened on numerous occasions and she believes this to be intentional on the part of the trader.
- Jasmine* reports that she has consistently been charged higher prices to those shown on the shelf at their local supermarket. Often, where there is a reduced price, the full price is charged. Jasmine uses the handheld scan and go system so she can immediately see the price she is being charged but she is concerned that for customers who rely on the shelf price, they will not be able to check they are being overcharged until they are making their purchase or will not be able aware that they have been overcharged.

This is already an illegal practice, however there is evidence that this practice persists.

It is clear that more needs to be done to prevent consumers paying more for items as a result of inadequate and inconsistent pricing displays of products.

Many consumers simply cannot afford to spend more than necessary on items because a lack of information and ambiguity around pricing prohibits consumers from making informed decisions.

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? &

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

We are in favour of the above provisions.We share concerns previously raised by Which? regarding the omission of unit pricing in the presentation of promotional sales. If pricing is not clear on promotional items, consumers could be drawn into thinking they're getting a good deal when they might not actually be getting much for the price advertised.

Which? has raised concerns about the omission of unit pricing for products markets as part supermarket loyalty scheme offers, stating that this leaves customers at risk of spending more on their food shop because they don't have all the information they need to make an informed choice. In one example, Which? found that a product was on offer for those with a loyalty card, but there was no inclusion of the unit price. Which? explained that many shoppers could wrongly assume the loyalty card "offer" was the best deal available, but in this example the product was available in another size which offered better value per 100g. By not explicitly stating unit price information on promotional offers, hard-pressed consumers may not be able to find the best deals and draw their own conclusions on what is the 'best' offer. As Which? has identified, while rules on unit pricing are set out in the Price Marking Order 2004, failure to display unit pricing on promotional offers could be against the CPRs requirements for retailers to avoid 'unfair commercial practices'.

We would welcome new measures that ensure that unit pricing is included in all promotional sales, to ensure that consumers can draw their own conclusions about whether a deal offers them better value than selecting a product that is not on offer. If pricing is not clear on promotional items, consumers could be drawn into thinking they're getting a good deal when they might not actually be getting much for the price advertised.

11.Should the small shops exemption continue to apply?

Wherever possible, we would welcome steps to ensure that more consumers have access to unit pricing information. We agree that it would be beneficial for the government to review the exemption, particularly to ensure that it is not being used by larger retailers who will likely have considerably more resources to enable them to implement unit pricing.

Whilst not explicitly covered by this question, through analysis of our Consumer Service data we have also identified several examples where consumers are experiencing unfair pricing practices in small shops. Most of these examples relate to failure to display price, or inconsistencies between display price and checkout price, rather than issues related to unit pricing. These are issues that DBT should be concerned with to ensure that consumers are not experiencing detriment. This also emphasises the importance of enforcement action if changes are made to the small shops exemption.

These examples include consumers not being able to identify the price of products and being charged for the same products differently from week-to-week. Within the past year, 474 casenotes were recorded by our consumer service for failure to display price, some of which related to small shops specifically. Below are a selection of summarised casenotes that explore these issues:

- Joel* reported that a village store is not advertising the prices for their food and drink, and it is only possible to find out the price of the goods once at the till. The consumer spoke to the trader regarding this issue but felt that their complaint was dismissed.
- Laura* reported that she went to a butcher's shop that is not displaying prices. Laura believes she has been charged different amounts for the same product on several recent occasions. When she reported this to the trader, she was told that they must have misheard.
- Lizzie* approached the consumer service to report that her local convenience store does not display prices for most of the items on sale.

She stated that a staff member informed her that this was due to price increases, which means it takes too much time to alter and display prices. Lizzie reported that the prices varied from week to week.

- Harry* reported that his local convenience store is failing to display the correct pricing and is charging a higher price at the till. When attempting to purchase an item with a ticketed price of £2, he was informed at the till that the price was in fact £2.25. When Harry questioned this, he was informed that the store was changing item prices but had not yet had a chance to change the labels.

In these examples a lack of pricing information is resulting in inconsistencies in how people are being charged. Unit pricing may help to overcome this, but this will also require enforcement action, as the evidence from our service shows there are examples where traders are not complying with existing price legislation.

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?

We believe that current legislation does not do enough to protect consumers from detriment caused by drip pricing. Our Consumer Service dealt with 239 cases relating to drip pricing or surcharges in the first 6 months of 2023, and 660 cases throughout 2022.mThis will only represent a small proportion of consumers who have faced issues regarding drip pricing, as many may not complain and may expect that this is just a practice they have to put up with. However, our data shows that consumers are concerned about drip pricing, with around half of people (52%) reporting that it would have a negative impact on their spending decisions.

We agree with the requirement under the CPRs that traders must provide consumers with the information required to make informed decisions and purchases. However, we see the term ‘material information’ as vague and are concerned that the point in a purchase journey when such information must be shared is not clear. In practice, lack of clarity on these two points leaves gaps in existing legislation that prevent consumers from finding the fairest and best value deals.

What is critical - and missing from the present approach - is the timing of when relevant pricing information is provided to customers. Merely ensuring customers are aware of the fees before purchasing is insufficient protection since it is well established that customers will place higher value in their decision making on the initial prices within the consumer journey. Further, having put time into decisions earlier in the consumer journey, there will be a reluctance to start the journey again at another retailer (where again there may be drip pricing) - the so-called 'sunk-cost fallacy'.

Alerting consumers to additional costs only later on in the purchase journey prevents them from finding the best deal by comparing prices across providers and products. More clarity is needed on what constitutes 'material information' and when it must be displayed to potential customers.

It is difficult to find any value for consumers in the practice of drip pricing and the CMA's recent discussion paper suggested that drip pricing is "likely to be harmful or deceptive all the time". The practice is also unpopular with consumers. Around half of people (52%) think that drip pricing would have a negative impact on their spending decisions.

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?

Citizens Advice believes that all mandatory fees should be incorporated into the headline price when the initial price of a product is displayed, wherever possible. This should apply to any fees that are completely unavoidable, such as mandatory service charges that customers have to pay to checkout, as well as administration fees that consumers have no way of avoiding.

There may be some situations where an exact fee is not immediately calculable, but the fact that a purchase will be subject to a mandatory fee should be made clear at the start of the journey. This may apply, for example, where a person is purchasing multiple tickets but will pay only a single transaction fee regardless of how many tickets they purchase (as presented in Image 5).

The following image illustrates an example of purchasing concert tickets based on a mystery shopping exercise. This demonstrates this complexity, and provides an example of multiple ways that mandatory fixed fees can be flagged to customers when displaying the headline price of goods and services.

Image 5: Display of mandatory transaction fees, and other mandatory administration costs in an online ticket sales platform.

A fee of £2.50 will apply to all transactions	
Block Standing	Row AA
Standing Ticket £38.50 per ticket	

Total Costs	
2 x Standing Ticket £32.50 x 2	**£65.00**
Per Item Fees £3.25 Service Charge £2.75 Facility Fee	**£12.00**
Transaction Fee £2.50	**£2.50**
Subtotal Excluding delivery	**£79.50**

The cost per ticket is listed as £38.50 during the initial search for seats, along with a note mentioning a £2.50 order handling fee per transaction. When you select the tickets and proceed to check out, a more detailed cost breakdown is provided. This shows that the £38.50 headline ticket price includes the £32.50 base ticket price, a £3.25 service charge, and a £2.75 facility charge. The fixed fees that are charged per ticket are rolled into the headline price of the ticket initially displayed to customers, and the fixed fee that is charged per transaction is flagged initially and then added to the basket at checkout. While this example does not provide clarity on what the various fees charged actually mean, a potential concert goer would have a good idea of what they would have to pay for tickets through this vendor.

The principle displayed here could be more widely applied: **Where fees relate to the purchase of a specific item then then should be included within the**

headline price of that item. Where fees are fixed across the whole transaction, they should be prominently displayed at the first opportunity (and throughout the transaction).

Consumer detriment from drip pricing stems from not knowing the true cost of a good or service and being unable to shop around for a good deal. Requiring that traders include or flag fixed mandatory fees up front, as in the example above, would prevent consumer detriment by allowing for straightforward cost and value comparisons between different traders or between different products. This is also important as low headline prices can have an 'anchoring effect', whereby the initial price can give the impression that the overall price is low even if this is not necessarily the case once add-ons are applied.

The challenge with defining "mandatory" vs "optional" fees

We recognise that there are practical challenges with determining what costs should be considered mandatory and what should be considered optional, particularly across different marketplaces and sectors.

We would, therefore, encourage DBT to consider tests that companies can apply across marketplaces when determining this distinction. We would suggest the following:

- **Where the cost is unavoidable to the majority of consumers it should be incorporated into the headline price that is displayed, or prominently flagged where this is not possible.** We anticipate that this would apply to mandatory administration fees and transaction costs.
- **Where a cost is in theory optional, companies should have regard to the behaviour of the average consumer when determining whether or not to include it in headline prices.** For example, when determining whether luggage costs should be incorporated into flight prices, airlines should consider whether most customers purchase luggage.
- **When determining costs for add-on products and services, companies should consider the needs of consumers in vulnerable circumstances to ensure that they are not forced to pay disproportionately higher costs than other customers to access a product or service.** For example, charges for paper tickets are likely to be in practice non-optional for customers who do not have high levels of

digital literacy or who do not have a smartphone. We would expect companies to consider these customers in the design of their pricing models to ensure that these costs do not fall disproportionately on consumers in vulnerable circumstances and are instead shared.

- **Firms should consider whether a customer buying a good or service would have a 'reasonable expectation' that an additional good and service would be provided with it or be required in order to use the good or service.** For example, when buying a sofa bed a consumer may have a 'reasonable expectation' that this would include the price of the fabric cover, especially if this is used in the display image.

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?

As noted above, Citizens Advice believes that traders should be required to inform consumers about mandatory fees when showing the headline price of a product. The display of variable mandatory fees poses an additional challenge that the cost of the fee may not yet be known while a consumer is viewing headline prices. Traders can still alert consumers of the existence of variable mandatory fees, and should display the value of such fees as soon as is practically possible in order to avoid and minimise consumer detriment. For any fees that require further information from the consumer in order to be calculated, such as a postcode for delivery fees, consumers should only have to provide information relevant to this calculation.

How soon the value of a mandatory variable fee can be displayed depends on how the fee is calculated. Often, variable fees are calculated as a percentage of the headline price of a product. In online shopping particularly, these fees can be easily calculated and displayed immediately alongside the headline price.

Image 6: Display of mandatory fees alongside display images.

Jacket

£20.00

£21.70 incl. fees

The illustration above shows how one retail platform lists the headline price of a product, followed by what the price is once mandatory variable fees are added. This fee does not require any further information to be calculated, so is available immediately as consumers are browsing products. Whilst arguably improvements could be made to the prominence of this fee, this still represents an example of good practice in ensuring this information is presented to the customer at the start of their journey.

Variable fees that are calculated based on other metrics, such as delivery fees based on distance or volume of an order, often cannot be calculated until a few steps further in the purchase journey. A delivery fee that varies based on the purchaser's address can't be calculated until the consumer provides those details, and a fee based on the quantity of items purchased cannot be calculated until a consumer confirms the final contents of their order. However, the fact that these fees exist, and expected ranges, can be flagged to consumers before this so that they can be taken into consideration. Where there is a minimum level of these fees regardless of further information, this value should be incorporated into the headline price if possible, or made clear to the customer at the earliest stage of the consumer journey.

Where a variable fee is calculated based on information from the consumer, like their postcode, consumers should not be required to share irrelevant information or personal details in order to see the cost of the fee. We have seen examples of online vendors who calculate shipping costs at the checkout and require consumers to input and transmit details like their email address before entering their postcode and seeing the delivery cost. By doing so, vendors force consumers to disclose personal data before giving them all the relevant information about cost. In some cases vendors use this information to send reminders to customers about uncompleted transactions. Consumers should be able to see a delivery fee estimate based on their postcode only. Traders can also provide examples and ranges of what delivery fees might cost, for example based on different regions of the country. Providing this information to consumers in advance means they can get a sense of cost and decide if a product or service is right for them before sharing personal information with a vendor they may ultimately decide not to buy from.

Information on how fees are calculated is also an important mechanism to prevent vendors artificially inflating certain fees in order to lower the headline price of a good or service. We are concerned that vendors might for example use vague and nondescript fees listed in small print or later in the purchase journey to draw down the headline cost of a product or service to a level that will capture more consumer attention. For example, one accommodation booking company took action to place cleaning fees within headline charges, after it became clear that some vendors were charging very high cleaning charges so that they could bring down the price per night fee which would appear in search results. The same tactic can be used to falsely inflate delivery fees beyond what they actually cost in order to make a product appear cheaper. By requiring traders to disclose how fees are calculated, such misleading pricing practices can be avoided.

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.

In our response to Question 20 we have set out tests that traders can use when determining what should or shouldn't be considered an optional fee (i.e. what the average consumer would do, or what they would 'reasonably expect'). This will determine what costs should be incorporated into headline costs and what should be considered a genuine optional fee.

Where optional fees apply, consumers should be alerted as soon as possible as to what elements of a product or service they must pay extra for. Many marketplaces and their industry standards have changed rapidly in the past few years, and it is not reasonable to expect consumers to know automatically what will be included with something they purchase. For example does an airline ticket include a carryon bag, or a drink and a snack onboard? Does an online purchase include free shipping and free returns? This may also vary from vendor to vendor. Consumers should be able to see the answers to questions like this early enough in the purchase process that they can compare value between providers and understand whether the headline price will cover everything they need. This is also where consistent industry standards would be useful.

The manner of presenting this information is as important as the promptness and transparency with which the information is displayed. Transparency means not only telling consumers how much an add-on will cost, but also letting them know if there are multiple ways they can pay to access a specific add-on. Vendors sometimes give consumers the option to purchase different tiers or packages of a good or service, each with different add-ons included. If a more expensive package includes a specific add-on that a consumer wants, but that add-on is also available to buy separately (or more cheaply), showing the second option later on in the purchase journey is misleading and not transparent.

We also share DBT's concerns regarding how design features - such as the selection of default settings and other presentation decisions- may mislead consumers as to what add-ons are optional or not, which could result in unnecessary and unwanted purchases. This includes both where default settings may result in add-ons being pre-selected, and where providers don't provide a clear option for people to opt out of an add-on even if it is not required. This means that it is important for legislation on drip-pricing to also consider presentational features, and how these may influence consumer behaviour.

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?

There are many examples of fees presented as optional that in practice are necessary for some if not most people using the good or service. These exist across sectors, including travel, health and wellbeing, hospitality and entertainment.

Below we have provided several examples across different sectors and marketplaces. In our response to Question 20, we set out how a series of tests could be used to help firms identify where costs should be incorporated into headline costs or where they might be genuine optional add-ons.

Airline specific examples

The example stated above, getting seats together for parents and small children on flights, is an excellent example of a fee that is presented as an add-on that is in practice unavoidable for some consumers. Sitting next to a child that you must provide care for and ensure the safety of is not optional. The same might be true for people with other caring responsibilities.

On an even more basic level, getting a seat on the plane is not optional for any airline travellers. All passengers need to sit in a seat in order to travel safely. As far as we are aware, airlines that charge passengers to choose their seats will all eventually provide a passenger with a seat if they decline to pay for one. However, this is not always made clear as an option to passengers, who may worry that paying to choose a seat is mandatory, particularly where the design does not give much prominence to the option to skip seat selection.

All passengers for a flight also need to check in to be able to fly, but the practices and potential costs associated with this vary considerably between providers. For example, some providers will provide face-to-face check-in and boarding pass printing for free, whilst others charge a fee for these services. It’s important to note that whilst these fees may be avoidable to many consumers, they may not be avoidable in practice to some consumers. For example, checking in at the airport may not be an optional add-on for people who are digitally excluded, who do not have digital confidence, or do not have a smartphone. We are therefore concerned that the practice by some airlines of treating these as “optional fees” may have a disproportionate impact on consumers in vulnerable circumstances. We are also particularly concerned by examples where airlines have charged customers disproportionately high fees to be able to check in face-to-face.

Luggage fees are another fee that will be unavoidable for many consumers. This may depend on how far away the destination is or how long someone is travelling for, making the cutoff between ‘optional’ and ‘necessary’ baggage more challenging to define. For example, consumers travelling internationally for a holiday may view baggage as essential, but consumers travelling domestically for a weekend away may be happy to pay less to take only hand baggage.

These examples provide a good indication that the air travel sector would benefit from specific guidance on optional fees. In order to protect consumers and reduce detriment, such guidance should consider which add-ons are legitimately optional versus those which are necessary for most or certain groups of consumers or those which the average customer would reasonably expect to purchase alongside the ticket, and how the headline price of tickets are calculated. The dividing line between optional and necessary add-ons may vary depending on the length of a flight and whether or not the destination is international, so guidance would need to ensure that firms account for different circumstances appropriately. The tests we’ve set out in our response to Question 20 also provide a way of addressing these questions. For example, additional costs to be seated with children and in person check-in costs should be considered as costs that are not optional for certain groups of consumers, including those in vulnerable circumstances, we would therefore suggest that these should be considered in the overall costing approach to ensure these costs are not borne disproportionately by some consumer groups.

The example of luggage may instead be addressed by looking at what the average consumer purchases. For example, if the majority of customers on a chosen flight path select luggage this may indicate that whilst it is technically optional, the vendor would be aware that most customers would reasonably expect to be making this additional purchase. So firms should consider how luggage costs are displayed to ensure that artificial low costs are not used to hook customers in when they bare little relation to what an average passenger ends up paying. This may result in distinctions based on destination, for example we would anticipate that the average consumer on a regular holiday flight plan is likely to take luggage, whereas those flying short haul may only need hand luggage.

What customers would have a 'reasonable expectation' of paying extra for may also be useful in preventing airlines from regularly shifting the dial on what is or isn't included in ticket costs. We have seen many changes to what is included in headline costs which represents a whittling down of value. For example, only a few years ago the cost of storing luggage in the overhead locker was routinely included in ticket prices, but in recent years many airlines have moved to charging additional costs. This is where greater consistency would also be helpful across the sector to enable consumers to compare between airlines.

Ticket services, across travel and entertainment industries

For flights as well as other forms of travel (trains, buses, etc) and ticketed events, people who do not have a smartphone need to be able to access physical tickets in order to effectively use the service they purchase. Vendors of these types of services often charge for printed tickets. In some cases this includes fees for tickets that customers will have to get printed themselves - for example one rail ticket provider charges customers a £1 fee to collect tickets from self-service machines at train stations. This means that the only free option for customers is use of e-tickets, which may not be available to customers who do not have a smartphone.

As we've set out in our response to Question 20, we would expect these costs to be considered by companies when designing overall pricing structures to ensure that consumers in vulnerable circumstances are not forced to pay disproportionately higher costs to access the same product.

Administration fees, service fees & transaction fees

Administration fees, services fees and transaction costs exist across a range of markets. They are commonplace in relation to ticket sales for events, cinemas and transport tickets.

In the main theses costs are completely unavoidable (with a few exceptions where they might be avoidable through face-to-face purchases). Consequently we believe they should be incorporated into headline costs, or disclosed clearly at the start of the purchasing journey where they are calculated on a variable basis.

Gyms, joining fees and other costs

Gyms are an example where drip-pricing is used both to relate to non-optional costs and optional extras.

For example, some gyms will offer additional services, such as access to additional facilities, towel hire or long term locker rental, that in practice are optional extras. They should ensure that pricing structures are transparent about what they include, but we would not expect these to feature in headline costs as customers may wish to secure lower costs by foregoing some of these facilities. These kinds of add-on costs should be considered in the context of what consumers would 'reasonably expect' to be included.

However, there are examples of unavoidable fees that are used in the sector that could be incorporated into headline costs, or advertised upfront, to make it easier for people to compare costs. This includes joining fees, which are not avoidable. In our mystery shopping exercise we also identified an example of an annual surcharge which was added to a gym subscription for "development". This was an additional annual charge payable on a set date, in addition to monthly rolling subscription charges. As all gym-users will automatically be charged this fee we would expect this instead to be incorporated into the monthly membership costs. This pricing structure may make it difficult for customers to compare the costs of this gym, compared to others in the area.

Image 7: Example of a gym that includes an annual surcharge.

Cost Information

You will be charged 29.99 monthly on the 1st of the month.

You will also pay:

- A £20 joining fee

NOTE: From 1 June 2023 an annual development fee of £10 will be charged

Retail examples

Throughout retail there are also many examples of drip-pricing practices. This includes examples where customers will have to purchase additional items to receive the item as pictured, or may have to buy component parts separately in order to receive a product that they can use.

For example, when undertaking a mystery shopping exercise we identified an example where a sofa bed was listed as £979, but on clicking through it became clear that the photographed cover was not included in that price, and the customer would have to pay a further £110 to purchase the cover, in order to obtain the product as pictured.

There are certainly examples where customers might want to buy components separately. For example, to take the above example, it is reasonable to expect that some customers may wish to purchase a sofa cover on its own to replace one that has become worn. But when shopping for a sofa bed they may require both parts. In general retailers could be more transparent about what is or isn't included in the headline price.

As set out in our response to Question 20, this is where we would expect firms to consider what a consumer would 'reasonably expect' would be included in the price.

General challenges

What is considered an optional or mandatory add-on is likely to vary considerably across sectors. It is, therefore, important that any proposed rules are able to operate across different contexts.

It is also important that any proposed approach is able to keep pace with the speed of digital development, as there is a risk that some firms respond to guidance by developing new tactics to enable them to avoid placing key costs in headline fees. Examples of this might include creating new "add-on" products that were not covered by legislation but that may previously have been included within the product, or making use of other deceptive patterns to influence consumer behaviour.

This is why we would encourage the development of a framework approach, akin to the tests we've set out in our response to Question 20. This will help to ensure that new requirements are futureproofed.

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 our view both strengthened legislation on drip pricing and sector-specific guidance on optional fees are necessary in order to prevent and reduce consumer detriment. The former approach raises the bar more broadly for consumer protection, while the latter would provide useful further detail for industries where the line between optional and non-optional fees is less clear. However, sector-specific guidance alone would not be enough to properly protect consumers as many industries and online marketplaces are constantly changing, and new issues are likely to come up over time.

For new, strengthened legislation to be really effective at protecting consumers, regulators should consider how to incorporate flexibility and adaptability into the law. Regulation that focuses only on what practices should be banned and what practices should be mandatory is vulnerable to developing gaps as industries naturally grow and change. What really matters in practice is the impact on consumers. To overcome this challenge, in our response to Question 20 we have set out a suggested framework approach that could be applied by firms in relation to drip-pricing. This requires firms to consider consumers best interests and expectations when determining what items are regarded as optional and mandatory fees, and also provides an approach for ensuring that the needs of consumers in vulnerable circumstances are met. For completeness, this would require firms to consider the following:

- Where the cost is unavoidable to the majority of consumers it should be incorporated into the headline price that is displayed, or prominently flagged where this is not possible.
- Where a cost is in theory optional, companies should have regard to the behaviour of the average consumer when determining whether or not to include it in headline prices.
- When determining costs for add-on products and services, companies should consider the needs of consumers in vulnerable circumstances to ensure that they are not forced to pay disproportionately higher costs than other customers to access a product or service.

- Firms should consider whether a customer buying a good or service would have a ‘reasonable expectation’ that an additional good and service would be provided with it or be required in order to use the good or service.

The benefit of a framework approach is that it can also link into practices that firms already use. For example, user testing and analysis of consumer behaviours are already readily used by industry. A framework approach would ensure that where firms are deploying these tools they are considering good outcomes for consumers.

This should also be underpinned by an amendment to the definition of professional diligence, which we explore in our response to questions 45-49. This is also important to avoid unintended consequences, as just viewing this problem through the lens of drip pricing ignores the fact that other harmful practices may emerge in its wake.

Through these amendments, legislation can be applicable to a range of different industries - current and future - by centering fair outcomes for consumers rather than specific practices.

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

In addition to improvements to overall consumer legislation additional guidance for specific sectors may be useful for providing clear examples of good or poor practice that relate to specific circumstances within that sector. It’s particularly important that guidance is targeted to sectors where drip pricing is highly prevalent, or where the detriment to consumers may be higher for example where high value goods are being sold. Sector specific guidance in particular will be able to set clear industry standards that can help to improve both consumer experience and competition. This may be particularly beneficial in the context of airlines and retail.

For example, in the airline industry consumers may wish to use flight comparison websites to make decisions over which carrier to use. At the moment different approaches to what fees are/are not incorporated into headline prices limit how easily these tools can be used by consumers to make decisions. Sector guidance would be able to clearly set out expectations into what costs should be incorporated into headline costs, and what may reasonably be expected to be an add on. This is also an area where what is considered an add-on may vary somewhat based on contextual factors. For example, applying the tests we've set out in our framework approach, luggage might be incorporated into headline costs for long haul flights where this is supported by consumer behaviour, but might not in the case of short trips where consumers may typically choose to fly without luggage.

This may also apply to areas like hotels, where price comparison websites are commonly used, and as a result consistent standards are helpful in ensuring that consumers can make decisions that are right for them.

By creating clearer market standards, competition may also be improved as companies will be able to compete on the strength of their offer, rather than a race to the bottom approach based on drip-pricing and other patterns that may exploit behavioural biases.

Retail is another sector where specific guidance may be beneficial to set out best practice with regards to determining where a consumer would 'reasonably expect' something to be included within the headline price. This may need to be underpinned by specific examples, as there may also be important exceptions. For example, efforts to reduce environmental waste might mean that some products are considered as add-ons to prevent over-consumption. This may for example, apply to battery packs for small electronics where many consumers are likely to already possess a compatible charging device.

Online Platforms

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

Our previous research has found that a range of design patterns can result in consumer detriment. DBT may find it helpful to read our previous research in relation to online choice architecture, which includes:

- *Tricks of the trade: how online customer journeys create consumer harm and what to do about it* - this report explores how design choices can shape consumer behaviour. It also includes several market-specific follow on reports, exploring design in gambling, Buy Now Pay Later products, and subscriptions.

- *Pushed to Purchase: Counting the cost of deceptive digital design in e-commerce* - this report explores the cost to consumers from practices such as drip pricing, countdown timers and other common features of online choice architecture.

In the latter report we found that in the last year, 1 in 6 consumers had ended up spending money on something they didn't want, need or regretted, because of the way an online shopping platform was designed. Where this had happened, consumers most often reported that it related to the following design features:

- Information that was misleading or difficult to find
- Being rushed into making a purchase because of countdown timers
- Spending more on an item because it was initially advertised as cheaper (drip pricing)
- Feeling rushed into making a purchase by limited stock claims
- Signing up for a subscription without intending to or knowing all of the conditions; and
- Spending more money than they wanted or buying the wrong thing because default items were selected.

We estimate that this has cost consumers almost £2.1 billion in the last year alone.

In the context of these findings we welcome that the new Digital Markets, Competition & Consumers Bill, includes action on subscription traps, and are pleased to see this consultation on drip-pricing. But the findings above also emphasise the importance of considering design patterns more broadly, to ensure that patterns like countdown timers, default settings and other features are not resulting in detriment to consumers. Our response to the questions on professional diligence requirements below touches on this issue.

Professional diligence requirements

Response incorporates:

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

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

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

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

Part 3 of The Consumer Protection from Unfair Trading Regulations 2008 says that a trader will be guilty of an offence if they “knowingly or recklessly engage in a commercial practice which contravenes the requirements of professional diligence” and “the practice materially distorts or is likely to materially distort the economic behaviour of the average consumer”.

The Consumer Protection Act 2008 defines professional diligence as “the standard of special skill and care which a trader may reasonably be expected to exercise towards consumers which is commensurate with either— (a) honest market practice in the trader's field of activity, or (b) the general principle of good faith in the trader's field of activity”. This wording is mirrored in the draft legislation of the Digital Markets, Competition and Consumers (DMCC) Bill. However, neither define “good faith” and “honest market practice” or set out how the terms may be interpreted. We are therefore concerned that this may result in inconsistencies in how companies interpret “good faith”, especially in an online context, which could leave the door open to poor practices that are not explicitly prohibited by existing legislation. Conversely, we see that by providing additional clarification of these terms in the context of online retail could be an effective tool for addressing a number of known problems around online manipulative practices which DBT previously highlighted in its consultation on the DMCC.

As more and more consumers turn online to access products and services, we think that the interpretation of “good faith” needs to evolve to respond to the unique challenges that the digital world presents. In particular, we are concerned that the legislation is currently silent on the responsibilities of firms in relation to design decisions and how they deploy online choice architecture. Design is not neutral, and decisions about how information and choices are presented online can result in widespread detriment for consumers if these decisions are not made with due care. This includes consumers spending more money than they need to, purchasing products or services by accident or with poor understanding of what they are buying. For example, in our previous research we have found that:

- 1 in 6 people report that ended up spending money on something they didn't want, need or regretted, because of the way an online shopping platform was designed. (Source: *Pushed to Purchase - Counting the cost of deceptive digital design in e-commerce*)
- 28% of of people who have used a Buy Now Pay Later (BNPL) product have used a BNPL service without realising it. (Source: *Tricks of the Trade - Buy Now Pay Later Annex*)
- 1 in 4 consumers have ended up in a subscription without meaning to in the last 12 months. (Source: *Pushed to Purchase - Counting the cost of deceptive digital design in e-commerce*)

Whilst these issues relate to different marketplaces, all of these stem from design decisions, which emphasises the importance of improving standards in digital design to prevent harm to consumers.

It is our view that the widespread use of online choice architecture that is detrimental to consumers indicates that it would be beneficial to provide an interpretation of "good faith" that sets out expectations for firms in relation to digital design.

We believe that this could help to raise standards in digital design and could help to prevent the risk of a "race to the bottom" where firms deploy design practices that contravene consumer interests in order to retain a competitive advantage against competitors.

There has been considerable attention to issues like this in financial services in recent years with the development of the Consumer Duty in financial service by the FCA. We think some of the conclusions reached in that work could carry over into broader consideration of professional diligence. For example, the

Consumer Duty has set out several expectations that apply to online choice architecture. The Consumer Duty guidance states that examples of where a firm is not acting in good faith would include:

> (a) failing to take account of retail customers' interests, for example in the way it designs a product or presents information; and
>
> (b) seeking inappropriately to manipulate or exploit retail customers, for example by manipulating or exploiting their emotions or behavioural biases to mis-lead or create a demand for a product.
>
> (Source: FCA Handbook, PRIN 2A.2 Cross-cutting obligations)

Adopting a similar framing when approaching the requirements of "good faith" within the DMCC Bill would clearly signal that firms must consider the impact of their design decisions on consumers, make it easier for enforcement bodies like the CMA to intervene and provide clarity to the judiciary when interpreting the DMCC in the context of digital design.

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