

CMA207 Consultation_ISPA Response

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About ISPA

ISPA is the trade association for providers of internet services in the UK, representing a diverse and dynamic membership that encompasses the full spectrum of the ISP sector, with approximately 200 members, ranging from SMEs to large multinational companies. ISPA engages with policymakers, regulators, and other stakeholders to provide a unified voice for a diverse ecosystem, including operators that are building our future communications networks, and those that resell via fixed and wireless networks. Our members provide internet access, infrastructure, hosting, and a wide range of other services to consumers and businesses. Together, ISPA's members build and provide digital communications networks which underpin our modern society.

Application of section 230(2) to cover total prices for fixed period contracts

We are concerned about the unintended consequences stemming from the CMA's interpretation that section 230(2) of the Act creates a requirement that "for the purchase of a product over a fixed period, the 'total price' advertised by a trader must be the price that the consumer will necessarily incur over the course of the contract."

Paragraph 9.15 of the consultation indicates that, the "purpose of this provision is to ensure that consumers know up front what they will end up paying, instead of additional mandatory pricing information being revealed gradually, to ensure that such pricing information is given accurately and in a full and timely manner."

The use of monthly, rather than whole-term, costs is not an example of drip pricing, which this section of the Act seeks to address. The suggested approach will have unintended consequences for consumers and for businesses in already heavily-regulated markets with established consumer regulations:

1. Telecoms consumers already benefit from an established and tightly regulated approach to the presentation of pricing information. The additional application of a universal approach, that takes quite a different approach, as suggested by the CMA, could lead to confusion.
2. Telecoms businesses have already invested significantly in meeting long established and recently introduced regulatory obligations, including requirements for presenting in-contract price rises clearly.

Mandating further changes, particularly within a short period of time, risks creating inefficiencies and would not allow any opportunity to assess whether Ofcom's new requirements are having the desired effect on customer understanding of price.

Regulation of monthly pricing for broadband contracts

For a fixed-term broadband contract with clearly set-out monthly prices, the pricing information is transparent and no additional information is required to determine the price of the contract as a whole (which is simply the number of months multiplied by the relevant prices). We are firmly of the view that this approach falls within the scope of s.230(2)(b) and meets the requirements of informing the customer of the 'total price' – that is, it provides the consumer with a clear understanding of exactly how much they will pay. This is backed up by the current regulatory approach in the telecoms sector:

1. It is a requirement of the advertising regulator that the monthly price of a broadband contract is presented in a way that makes clear to consumers what they will pay each month – whether this is the same price for every month of the contract or (for example) a price that changes after an introductory discount. Any changes to the monthly price are to be presented as the whole new fee in 'pounds and pence' (thus avoiding the need to do more complex percentage calculations) under a new requirement of the telecoms regulator. As such, the existing pricing requirements on invitations to purchase are extremely well-regulated and clear to consumers.
2. In addition, the telecoms regulator also specifically defines the Core Subscription Price of a broadband contract to be "the sum (however expressed in the contract) that the Subscriber is bound to pay to a Communications Provider at regular intervals for services and/or facilities the Communications Provider is bound to provide in return for that sum" [emphasis added]. The relevant 'total price' for broadband is defined by the regulator to be the total monthly fee, which is therefore the key piece of pricing information for broadband contracts.
3. Moreover, it is important to note that Ofcom explicitly considered the merits of requiring providers to present the total cost of a contract when it decided to introduce the new £/p requirement in July 2024. Ofcom "concluded that it may be difficult to implement a requirement to present the total contract cost or average monthly price of all services subject to the GCs effectively" (e.g. bundles that contain elements of different contract length or rolling subscription elements). The regulator added: "[g]iven that, and the fact the £/p requirement will mean customers would have sufficient clarity and certainty about

the price they will pay, so that they are able to make more informed decisions on the best deal for them, we did not think this was required.”¹

We are not aware of any research or insight that suggests the presentation of an aggregated ‘total price’ for broadband services would drive any incremental consumer benefit and thus justify the additional compliance costs. Indeed, the telecoms regulator explicitly decided against the switch towards a total price of this type in July 2024.

Relevance of monthly pricing for broadband contracts

The regulatory approach chosen by Ofcom is a reflection of the fact that the telecoms market typically sees a range of contract lengths² and types of bundles with monthly prices decreasing with contract length.

The requirement to provide whole-term contract costs could thus lead to confusion:

- Longer contracts with cheaper monthly costs will look more expensive than shorter contracts with higher monthly costs.
- Without requiring further calculations (e.g. rule of three), the different contract lengths are difficult to compare, unless consumers recalculate the costs to a common denominator, e.g. a monthly price.

There is a strong case to be made to recognise that clarity of pricing in these markets can be provided under the existing regulatory approach, with no need for any change in practice to protect consumers. That weighs in favour of the CMA adopting guidance that adopts a flexible approach and that what constitutes the ‘total price’ can vary depending on the context, provided the overall purpose of the provision is fully achieved.

An example of a context in which such a flexible approach would be relevant would be for fixed-term contracts in sectors where those periods are not standardised and where pricing information is already strongly regulated. In these cases, as the cost of the contract depends on the length, which is variable between products, the same rules should apply as suggested for products sold by a unit of measurement, as per paragraph 9.26 of the consultation.

Requirement that all pricing information must be set out with equal prominence

Annex C of the consultation provides the following information in relation to Regulation 6: “Requires that all pricing information must be set out with equal prominence” and the worked

¹ [Ofcom:2024.Prohibiting inflation linked price rises](#)

² Rolling-monthly, 12 months, 18 months or 24 months contracts

example in 9.17 does not distinguish between different types of pricing information. We question whether this interpretation goes beyond the intention of the Act.

The only reference to “prominence” in Section 230 is contained in subsection (5)(b) which in turn provides a cross-reference to sub-section (2)(b), which in turn provides a cross-reference to sub-section (2)(c). This chain of sub-sections relates specifically to non-calculable prices, and the need for the information explaining the calculation of the total price to be placed with equal prominence to the portion of that price that can be calculated (which has the same requirements as the ‘total price’ as per (2)(b)).

The Act does not contain any stipulations about the prominence of the total price in relation to any other information in the invitation to purchase, just that it must be clear, timely, and likely to be seen by consumers. The CMA has used the phrase ‘headline price’ to describe any stated price within the invitation to purchase, but the Act does not specify that the total price needs to have the same prominence as the headline price. This becomes particularly relevant in instances where it will be difficult to clearly set out all material pricing information clearly, promptly and unambiguously and where the current interpretation could make it more difficult for consumers to compare different products across the telecoms market.

Conclusion

The CMA’s stance in the Draft Guidance is unnecessary and disproportionate, bringing consumer confusion and disruption to established practices set by other agencies after due consideration and without securing any discernible benefit to consumers or competition, relative to the status quo.

The use of monthly, rather than whole-term, costs in the telecoms sector is not an example of drip pricing. Ofcom already significantly regulates the broadband market, hence its exclusion from Chapter 2 of Act, and we are concerned that the universal application of the new unfair commercial practices guidance will have unintended consequences in specialised markets such as telecoms.

Given the high degree of regulation in the telecoms market, we strongly believe that the proposed application of Section 230 as set out in the Draft Guidance to the broadband market would have significant negative impacts on consumers’ ability to engage with the market and significantly increase regulatory costs for businesses.

We think it is clear that the drafting of the Act as well as the interpretation of the Act in relation to other products provides the CMA with sufficient leeway to provide guidance that is clear that the existing practices are capable of meeting the statutory test by providing a per month charge and a number of months for fixed period contracts.