

DMCC ACT USHERS IN A NEW AGE OF CONSUMER PROTECTION IN THE UK

The Digital Markets, Competition and Consumers Act 2024 (DMCC Act) received Royal Assent on 24 May 2024, bringing in long-anticipated reforms aimed at forging a UK regulatory framework fit for the digital age. The DMCC Act also introduces major updates to UK competition and consumer protection laws, with the main provisions currently expected to come into effect in late 2024.

In this briefing, we focus on the package of consumer protection reforms included in the DMCC Act and discuss how consumer-facing businesses may prepare themselves ahead of these reforms coming into force.

For an overview of the key changes introduced by the DMCC Act in relation to digital markets and general competition law, see our recent [Competition & Regulatory Newsletter](#).

CMA gets sharper teeth: new enforcement model for UK consumer protection

Overview

Under the current (pre-DMCC Act) regime, the UK Competition and Markets Authority (CMA) does not have direct powers to sanction businesses in its own right for a breach of UK consumer law (or if a business fails to provide information promptly or accurately during a consumer protection investigation). Although the CMA can investigate potential breaches of consumer law and negotiate undertakings with businesses that it considers to be non-compliant,¹ its ability to enforce consumer protections in contested scenarios relies on bringing the case before the court (in turn, lengthening the duration of such cases). In the absence of direct fining powers, the CMA has also previously resorted to seeking contempt of court orders where a company has been deemed to be a persistent infringer.²

Central to the DMCC Act's reforms is the creation of a new enforcement model - combining two regimes that seek to address these shortcomings, by replacing or upgrading the existing system with:

- a new administrative enforcement regime operated by the CMA, on which this briefing focuses; and
- an enhanced and simplified version of the existing court-based regime, under which "designated enforcers" (including, but not limited to, the CMA) can apply to court for action to be taken against a trader, with additional fining powers for the civil courts. The CMA will therefore continue to be able to enforce UK consumer law via the court system where appropriate, and will retain the ability to use criminal enforcement mechanisms via the courts for the most serious breaches of UK consumer law.

The new administrative enforcement model

As explained in our previous [briefing](#) on the draft text of the DMCC Act, the reforms significantly bolster the CMA's powers by creating a direct administrative enforcement model, in effect bringing the regime more closely in line with the CMA's existing antitrust enforcement regime.

In particular, the DMCC Act will empower the CMA to impose directly the following turnover-based fines on companies for UK consumer law breaches:

¹ Although the CMA is the main public enforcement body, there are a number of other bodies in the UK than can take enforcement action for breaches of consumer protection legislation, such as Trading Standards authorities or sectoral regulators, including the Civil Aviation Authority.

² For example, the CMA [brought legal proceedings for contempt of court](#) against viagogo in 2019.

up to 10%	up to 5%	up to 1%
of a company's global annual turnover on finding an infringement of UK consumer law	of a company's global annual turnover for a breach of any undertakings given as part of a CMA consumer protection investigation	of a company's global annual turnover for non-compliance during a CMA consumer protection investigation (e.g. a failure to respond to information requests, providing false or misleading information, or destroying, concealing or falsifying evidence). ³

The CMA will also be able to require “enhanced consumer measures”, which could include consumer redress and compensation measures to be paid out by companies or could provide for the early termination of contracts.

The magnitude of the fines that will be issued by the CMA in practice remains to be seen, but the introduction of these potentially large financial penalty caps may nevertheless act as a significant deterrent for non-compliance. The new regime follows the trends we are seeing in the wider EU consumer protection space towards enhanced enforcement and turnover-based fines for consumer law breaches.⁴

Recognising feedback raised in a 2021 consultation on the DMCC Bill about the potential risks associated with the CMA's significant new powers in this area, the final version of the DMCC Act provides for a full merits appeal to the High Court in respect of decisions that lead directly or indirectly to financial penalties, in addition to a judicial review model for other decision types.

It is worth noting that the UK's opt-out collective actions regime is not currently available in respect of UK consumer law breaches. A proposal to extend the opt-out regime to cover consumer protection in addition to competition law ultimately did *not* make its way into the DMCC reforms, in spite of discussions on this topic in both Houses of Parliament. It remains to be seen whether this point will be picked up again in the future.

Consumer protection in a digital age: policy reforms

In a bid to better protect consumers from deceptive practices in the digital economy, the DMCC Act creates novel substantive areas of consumer rights, in addition to modernising pre-existing UK consumer protections. In particular, the DMCC Act restates and replaces the list of ‘blacklisted’ practices set out in the current Consumer Protection from Unfair Trading Regulations 2008. ‘Blacklisted’ practices are automatically considered to be unfair in all circumstances and therefore prohibited, without having to assess the effect on consumers.

³ Additional penalties may be applied on a daily basis for continued non-compliance by the company.

⁴ See, for example, the 2020 reforms to the EU Consumer Protection Cooperation Regulation, which have given much sharper teeth to consumer protection enforcement at the EU level.

The key areas of policy reform include the following:

Fake reviews



Several practices related to fake reviews online have been added to the list of blacklisted practices. These include:

- publishing a fake review, or commissioning or incentivising a person to write or submit a fake review;
- offering or advertising to submit, commission or facilitate a fake review; and
- misrepresenting reviews, or publishing or providing access to reviews of products and/or traders, without taking “reasonable and proportionate” steps to ensure reviews are genuine and not presented in a misleading way (e.g. giving greater prominence to positive reviews over negative reviews, and omitting any relevant contextual information in relation to how the review has been written (such as whether incentives were provided to the author in writing the review)).

Drip pricing



Drip pricing occurs when a consumer is shown an initial price for a product, but additional fees are then added on top as they proceed with the transaction. This practice can occur in both online and offline settings, with “dripped fees” being either mandatory or optional - ultimately increasing the purchase price. The reforms will prohibit presenting a headline price which does not: (i) incorporate in the price any fixed mandatory fees that must be paid by all consumers; and (ii) disclose the existence of any variable mandatory fees and how they will be calculated.

Importantly, enforcers will no longer have to prove that a failure to present the total price and the existence of any variable fees will cause, or be likely to cause, the average consumer to take a different purchasing decision.

Subscription traps



Subscription traps are subscription models that entice consumers to sign up using free or low-cost trial periods, and then either do not alert them to the end of the trial period, auto-renew, or otherwise make it difficult for the consumer to cancel their subscription. The DMCC Act introduces significant reforms in relation to subscription contracts, including requiring businesses to:

- provide pre-contract information to ensure that consumers can make an informed decision by understanding the nature of the contract, such as pricing changes, how to terminate the contract and how much notice is required for termination;
- offer a 14-day cooling off period whereby customers may cancel their subscription if they wish and receive a refund, without the requirement of any reason or penalty;
- issue regular reminders to consumers regarding their rights to terminate the contract and when the subscription will renew, with sufficient advance notice; and
- provide a simple and clear methods for terminating the subscription, by enabling consumers to give a clear statement setting out their decision to bring the contract to an end. If the contract was entered online, the consumer must be able to terminate the contract online and the instructions on how to do so must be easy to find.

Other updates



Other updates of note include some changes in relation to countdown timers, consumer saving schemes and secondary ticketing facilities (among others).

Further guidance is expected to clarify some of the steps that companies should take to comply with the new rules. In particular, the [CMA's October 2023 response](#) to the Government consultation on price transparency may provide some flavour of the anticipated guidance on fake reviews. The CMA has stated in that consultation response that it considers taking “reasonable and proportionate steps” to combat fake reviews to include:

- conducting regular risk assessments and internal evaluations;
- having systems and processes in place to proactively identify, investigate and/or respond to or remove fake reviews;
- providing third party notification systems to enable third parties to report content or activity that might constitute fake reviews; and
- applying sanctions to dissuade, deter and prevent users engaging in fake review-related activity.

While we await more detailed guidance and secondary legislation, there will be areas of uncertainty and the new rules may create implementation challenges for businesses.

Preparing for the new regime

Consumer protection compliance and enforcement is taking an increasingly prominent position in the UK, with the DMCC Act drastically increasing the stakes for businesses in the event of non-compliance. The CMA's enhanced enforcement toolkit will promote swifter, direct action where the CMA identifies potential breaches of UK consumer law. Consumer protection is top of the agenda at the CMA, and the regulator has emphasised the importance of robust consumer protection in its 2024 to 2025 [Annual Plan](#).

Most of the relevant provisions of the DMCC Act are currently expected to come into force in late 2024, with the precise timing ultimately being determined by the next Government. The CMA's new powers will not have retroactive effect (i.e. UK consumer law breaches occurring before commencement of the DMCC Act will continue to fall to be considered under the previous regime), but any continuing infringement occurring when the DMCC Act fully comes into force may well be investigated under the CMA's new powers.

It is therefore crucial for companies to be proactive and take stock of their preparedness at an early stage, with a view to mitigating the risk of potential issues arising in the future.

With this in mind, we have set out below some pointers for companies to consider as they prepare for the new regime:

Health checks and risk assessments



In preparation for the reforms, companies should perform a risk assessment and review existing consumer protection compliance policies to check if they require updating to reflect the new regime. This should include considering the detailed requirements of the DMCC Act (for example, verifying if any contracts are expected to fall within the new subscription contracts regime) and more holistically considering whether existing practices are sufficiently transparent and fair. Refresher training for relevant teams within the business may also be useful, in particular for those who are responsible for consumer-facing activities, or for handling complaints.

Organisational reform



Organisational changes may be required to aid internal checks and balances that promote compliance within the business. For example, companies might consider the level of oversight that internal legal teams have over complaints-handling processes. This might allow for enhanced monitoring of common themes or issues so that they can be swiftly remediated.

Proactive steps



Some of the DMCC Act's reforms require proactive steps to be taken by companies, as opposed to simply banning harmful practices. For example, as noted above, there will be a requirement to monitor online reviews to check they are genuine, and to send reminder notices for subscription-based products and services. Companies should therefore be giving thought to what, if any, processes need to be implemented to ensure compliance with these requirements.



Keep abreast of developments in this space

Businesses should ensure they stay informed of upcoming secondary legislation and CMA guidance in relation to consumer protection, as the expectations in this space become clearer in the lead up to the DMCC Act's commencement.

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