

The Digital Markets, Competition and Consumers Act 2024

A quick reference guide for the aviation industry

January 2025



1. Introduction

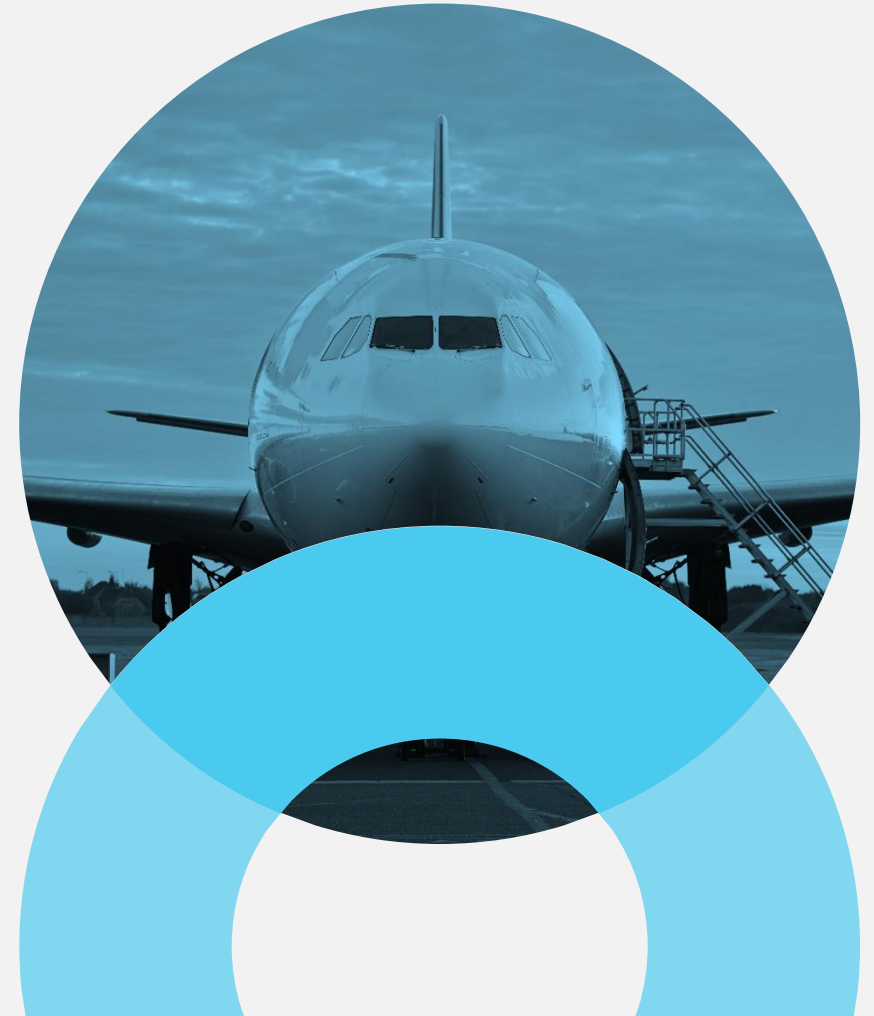
The Digital Markets, Competition and Consumers Act 2024 (the "DMCCA") is a landmark piece of legislation in the UK. It received Royal Assent on 24 May 2024 and is now law, although the majority of its most important provisions are not yet in force.

The DMCCA is aimed at regulating digital markets, enhancing competition and protecting consumers, and it has direct relevance to key stakeholders in the aviation industry including airlines and travel companies.

In this quick reference guide, we take you through some of the most significant features of the DMCCA and explain how these are most likely to be relevant to your business, as follows:

- Introduction of new consumer protections and amendments to existing consumer protection law.
- Stricter treatment for subscription models.
- Increased enforcement powers for the Competition and Markets Authority (including the power to issue fines equal to **10%** of a company's turnover, as well as to individual directors), the Civil Aviation Authority and other relevant regulators.
- Changes to the competition law regime.

This guide also contains an estimated timeline that will help you and your business take the necessary steps to prepare for the implementation of the DMCCA from 2025 onwards.



2. Consumer protection and existing legislation

The DMCCA addresses consumer concerns with new powers to combat issues such as "drip pricing", fake reviews, "subscription traps", and misleading pricing practices.

It addresses these issues as "unfair commercial practices" and therefore will replace the Consumer Protection from Unfair Trading Regulations 2008 (the "CPUTR") and other relevant consumer legislation once the relevant sections are in force.



Drip pricing

"Drip pricing" refers to a practice where companies advertise a base price, but additional charges (such as taxes, service fees, or optional add-ons) are added incrementally during the purchase process. As a result, the final price that the consumer pays is significantly higher than initially advertised.

Drip pricing has been a common practice in the aviation industry, particularly in the form of baggage fees, seat selection charges and other optional add-ons. Under the DMCCA, airlines must ensure that all mandatory fees are clearly displayed at the start of the booking process. This protects consumers from unexpected price hikes during the checkout stage, which has been a frequent complaint in the travel industry in recent years.

The DMCCA mandates that prices must be clear and transparent from the outset. This means that all mandatory charges should be displayed upfront, ensuring that consumers are not misled by low initial prices only to be confronted with additional fees later in the purchasing process.



Misleading acts and omissions

Part 4 of the DMCCA will prohibit any commercial practice that is likely to cause the average consumer to take a transactional decision that they would not otherwise have taken that is caused by a misleading act, a misleading omission, an aggressive practice or anything else that contravenes the requirements of professional diligence. The DMCCA also prohibits certain specifically named "unfair commercial practices", including false claims that a product is only available for a certain time.

2. Consumer protection and existing legislation (cont.)



Timing

The new consumer protection provisions in the DMCCA are not yet in force, but the UK Government has indicated that it expects to activate them by no later than Spring 2026. Given the significant enforcement powers available to the new Digital Markets Unit (the "**DMU**", the arm of the CMA who will oversee the new regime), we strongly recommend that aviation businesses that deal with consumers review the new requirements of the DMCCA and take the necessary steps to ensure compliance as early as possible.



Existing consumer protection legislation

Once activated, Part 4 of the DMCCA will repeal and recast the consumer protection provisions relating to "unfair commercial practices" currently found in the CPUTR.

It will also replace the subscription contract provisions currently located in the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013.

3. Subscription models



Many airlines and travel companies operate loyalty programmes (such as frequent flyer programmes) and subscription-based discount schemes. The DMCCA's focus on consumer protection will impact how airlines and travel companies market, structure, and deliver these programmes, particularly in relation to "subscription traps" where customers may find it difficult to cancel or understand the full cost of subscription-based services.

At present, the most relevant UK consumer protection law governing subscription services in general, including auto-renewal features, is set out in the Consumer Protection from Unfair Trading Regulations 2008, the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013, and the Consumer Rights Act 2015. Each of these pieces of legislation apply to contracts made with UK consumers, and they will apply even if the underlying contract provides for a different governing law.

The DMCCA establishes new rules that will govern subscription contracts. While these will not come into force until Spring 2026, we consider that airlines and travel companies should prepare to comply with them now.

3. Subscription models: new rules

Before entering into a subscription contract:

Businesses, including airlines and travel companies, must clearly outline the following "key information" to consumers prior to the commencement of the subscription contract:

1. the nature of the services offered;
2. the duration of the subscription;
3. whether the contract will renew automatically or be for a fixed duration;
4. any minimum period that must elapse before the consumer can end the subscription;
5. details of the fees that will apply at the end of any discount/trial period;
6. the date and frequency of further payments;
7. the minimum total that the consumer will be liable for under the contract;
8. details of how the consumer can end the contract; and
9. details of the right to cancel during initial and subsequent "cooling-off" periods.

This "key information" must be provided together and separate from the full pre-contract information, and it must be provided as close to the consumer's entry into the contract as possible.

During a subscription contract:

Consumers must be given a "cooling-off" notice informing them of their right to withdraw from the contract without penalty: typically, the "cooling-off" period will be 14-days from the date the contract started.

The initial "cooling-off" period must be repeated at each renewal. This represents a stricter requirement than is currently required by UK consumer protection law.

Consumers must be provided with regular reminders before automatic renewals by way of "Reminder Notices". Reminder Notices must include:

1. notification of any price increases;
2. confirmation of how much the consumer has paid since the contract last renewed;
3. confirmation of how much the consumer will be committed to pay in the next period; and
4. notification of the consumer's termination rights.

The exact timing applicable to each Reminder Notice depends on the duration of the contract, but a Reminder Notice must always be sent prior to the end of any initial free/discounted period.

Consumers must be provided with the means to cancel their subscription in a straightforward way, without unnecessary steps or obstacles (e.g., through the use of a prominent "cancel" button).

Consumers are also entitled to cancel their subscription at any time by providing a clear communication to the business that they do not wish to continue with the contract.

Where a consumer does cancel a contract, the business must confirm this through an acknowledgement notice. If the cancellation falls mid-term, the DMCCA will entitle consumers to recover a pro-rated refund.

The Government has already indicated that it expects to introduce secondary legislation to clarify certain areas of the DMCCA before they come into effect, including in relation to pro rata refunds paid to customers after cancellation. We therefore recommend that any relevant terms and conditions are kept under review.

**On 18 November 2024, the Government issued a consultation on the implementation of the new subscription contracts regime. The consultation, which can be accessed [here](#), will close on 10 February 2025.*

4. Enforcement powers and the role of the CMA



The DMCCA will greatly increase the enforcement powers available to the Competition and Markets Authority ("CMA"), the Civil Aviation Authority ("CAA"), and other regulators.

Under the DMCCA, both the CMA and the CAA will have increased powers to take action against companies that breach consumer law; such actions involve imposing financial penalties.

A key distinction between the CMA and CAA's powers to impose fines for breaches of consumer law is that the CMA can do so without needing to go to Court, whereas the CAA can only impose fines for consumer law breaches if it first seeks an enforcement order from the Court.

The proposals to give regulators powers to issue fines have been law in the UK since May 2024. However, the operative parts of the DMCCA (i.e., the parts that grant increased consumer protection powers to regulators like the CMA and the CAA) are not yet active and are only expected to come into force in April 2025 at the very earliest.

The following pages summarise the CMA's enforcement powers under the DMCCA with reference to:

1. The power to investigate suspected infringements (sections 180 - 183).
2. The power of the CMA to impose penalties for infringing consumer law.
3. The power of the CMA to bring criminal prosecutions against companies for breaches of consumer protection law (section 237 offences).
4. The power to hold directors, managers and other senior employees personally liable for a fine.

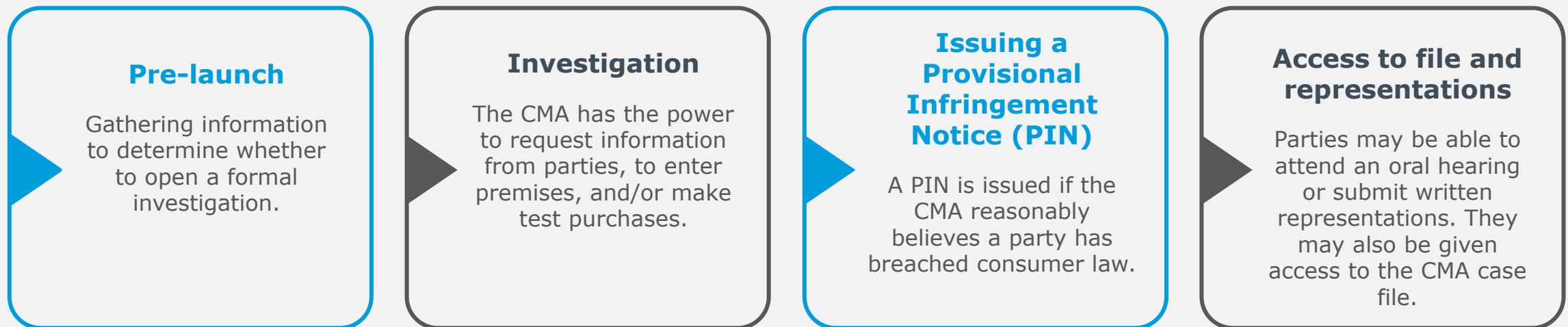
Enforcement powers of the CMA

1) The power to investigate suspected infringements (sections 180 - 183 DMCCA)

This power applies where the CMA has reasonable grounds for suspecting that:

- (i) a person has engaged, is engaging or is likely to engage in a commercial practice that constitutes an infringement; or
- (ii) if a person is an accessory to such a practice (e.g., by consenting to or assisting with the commercial practice in question).

The CMA's investigation process will broadly follow the following steps:



Enforcement powers of the CMA (cont.)

2) The power of the CMA to impose penalties for infringing consumer law

Substantive penalties

- Fixed amount not exceeding **£300,000** or, if higher, **10%** of the total value of the company's turnover (section 182(6)).

Administrative penalties

a) For breach of undertakings

- Fixed amount of **£150,000** or, if higher, **5%** of the total value of the turnover (if any) of the respondent company (section 190(3)(a)); *and/or*
- Amount calculated by reference to a daily rate of **£15,000** or, if higher, **5%** of the total value of the daily turnover (if any) of the respondent company (section 190(3)(b)).

b) For providing materially false or misleading information to the CMA without reasonable excuse

- Fixed amount not exceeding **£30,000** or, if higher, **1%** of the total value of the turnover (if any) of the respondent company (section 198(4)).

Enforcement powers of the CMA (cont.)

3) The power of the CMA to bring criminal prosecutions against companies for breaches of consumer protection law (section 237 offences)

The time limit to prosecute is:

- (i) 3 years after the date of the commission of the offence; or
- (ii) within 1 year after the date of discovery of the offence by the prosecutor (section 241(1)).

4) The power to hold directors, managers and other senior employees personally liable for a fine

Power to fine individuals, such as directors and senior managers, up to £300,000 for being an "accessory" to the consumer law breaches.

The CAA's powers will be the same powers as those mentioned above for the CMA with one crucial difference; the CAA cannot issue fines itself unless it goes to a Court first to seek an enforcement order from a judge pursuant to the Enterprise Act 2002.

An enforcement order would oblige the airline or travel company to cease the infringing conduct and/or pay the imposed fine.



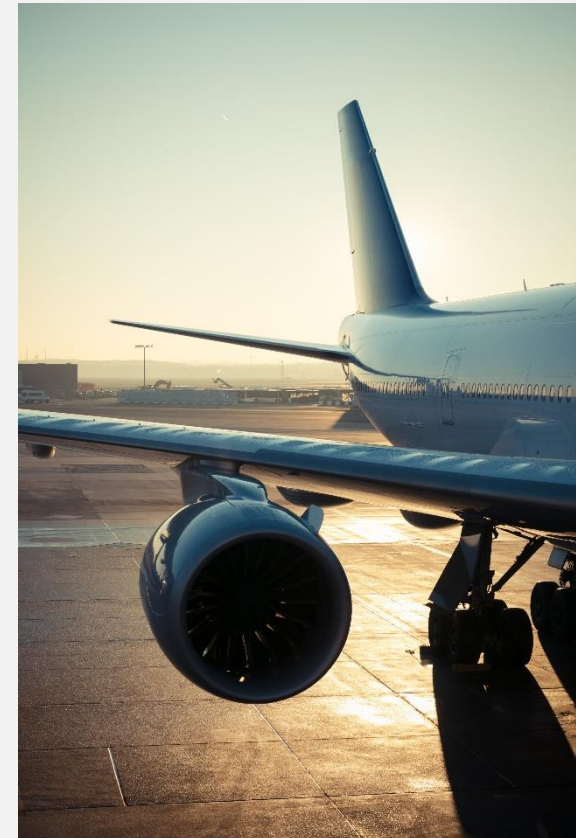
5. Competition law



With effect from 1 January 2025, the DMCCA introduces changes to the UK's competition law landscape, many of which may have direct and significant implications for the aviation industry.

The most important of these are as follows:

- increased **turnover thresholds** for the merger control regime (now increased to £100 million).
- introduction of a new **de minimis safe harbour** that will exempt entities from the merger control regime if the turnover of each merging entity is less than £10 million.
- increased scope for the CMA to claim **jurisdiction** over a merger in cases where:
 - i. both parties have a UK nexus (i.e., are supplying goods or services in the UK);
 - ii. one of the parties has an existing share of supply of over 33% in the UK; and
 - iii. that entity also has a UK turnover of more than £350 million.
- increased **investigation powers**, including:
 - the power to seize documents and devices from the private homes of individuals suspected of holding information relevant to alleged competition law infringements;
 - the power to compel interviews from any person, regardless of whether they are connected to the matter under investigation; and
 - an obligation on third parties to preserve relevant documents if they suspect that the CMA is carrying out an investigation.
- increased **financial penalties** (up to 1% of annual global turnover, or 5% of global daily turnover) for entities that obstruct CMA investigations, with further increased fines (5% of annual global turnover or a recurring fine of 5% of global daily turnover) for firms that breach commitments, undertakings, directions, orders or interim measures.



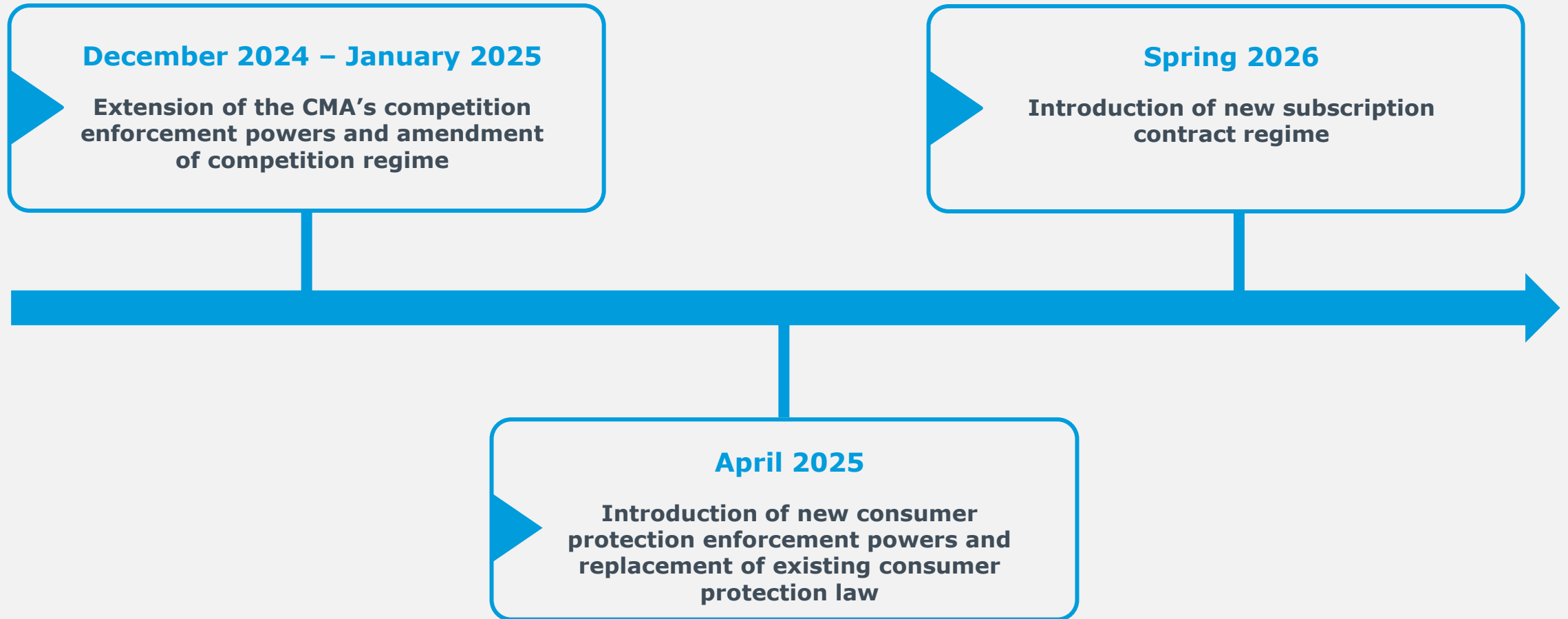
5. Competition law (cont.)

- These changes will be relevant to any aviation company involved in a merger taking effect after 1 January 2025. Airlines with a sizeable UK presence, and that will already need to be mindful of ownership and control requirements applicable to their AOCs, will also need to bear in mind the increased jurisdictional scope of the CMA in this regard.
- The CMA also now enjoys increased jurisdictional scope in respect of anti-competitive agreements or arrangements. Even if they have been implemented outside the UK, if such agreements or arrangements have a direct, substantial and foreseeable effect within the UK, they will fall within the CMA's purview too.
- The DMCCA introduces the concept of "Strategic Market Status" ("SMS"), which applies to certain digital companies that are identified by the CMA as possessing particular significance on account of their size and market position. Companies that are designated as having SMS are subject to much greater scrutiny by the CMA, but this is unlikely to affect aviation businesses such as airlines and travel companies.



For more information on SMS companies in particular and on the competition elements of the DMCCA in general, please see [this guidance](#) prepared by our specialist competition team.

6. Timeline for implementation



The CMA is expected to publish guidance on the DMCCA on a sector-by-sector basis. For further information, please visit the CMA’s webpages which will display the latest version of any Guidance.

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