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A curb on unfair practices – enhanced consumer protection rights and enforcement powers under the DMCCA

On 24 May 2024, the Digital Markets, Competition and Consumers Act ("**DMCCA**") received Royal Assent, introducing significant changes to the UK's digital regulations and wider competition laws.¹ The DMCCA also ushers in an enhanced consumer protection regime which builds on the foundations laid by landmark legislation in this area that preceded it (such as the Consumer Protection from Unfair Trading Regulations 2008 ("**CPRs**") and the Consumer Rights Act 2015 ("**CRA**"). For the first time, the Competition & Markets Authority ("**CMA**") – which, as well as being the competition regulator, also acts as the consumer protection watchdog – will have the power to enforce these laws directly without the need for a court order. Consumers will also be afforded greater rights and protections against unfair business practices, particularly in the area of online purchases and in digital marketplaces. In this way, consumers across the UK will, in the Government's own words, be given "*greater control and clarity*" in the exercise of their rights, particularly with regard to online purchases.²

This briefing sets out the key changes to the consumer protection landscape in the UK introduced by the DMCCA. Please note that the reforms to the regulation of the UK's digital markets and wider competition regime introduced by the DMCCA can be read [here](#).

Headline points include:

- The DMCCA introduces wide-ranging new consumer protection rules aimed at protecting consumers making online purchases and which are otherwise active in digital marketplaces. These include: (i) prohibitions against the use of fake reviews; (ii) banning the use of "drip pricing"; (iii) more stringent information and cancellation rights vis-à-vis subscription contracts; and (iv) enhanced rules around consumer savings schemes.
- The CMA will now have the power to fine a company up to 10% of its annual group worldwide turnover for infringements of consumer protection laws. The CMA will also have the ability to issue fines of up to 1% of annual global turnover (for companies) or £150,000 (for individuals) for any failure to co-operate with an ongoing investigation.
- However, contrary perhaps to the hopes of some stakeholders, the DMCCA did not ultimately include an amendment which would have allowed collective proceedings orders (a form of group litigation) to be brought in relation to infringements of consumer protection laws. Any collective actions for breaches of these laws must therefore be brought under more traditional forms of litigation.

¹ Please also see other Stephenson Harwood briefings on the DMCCA: (i) [Digital Decade: Digital Markets Act and Digital Markets, Competition and Consumer Bill](#); and (ii) [Here at last – new laws proposed on digital markets, competition powers and consumer rights](#).

² See the Government's press release at: [Digital Markets, Competition and Consumers Act receives Royal Assent - GOV.UK \(www.gov.uk\)](#)

Background to the DMCCA – the CMA's role in consumer protection

It is important to note that the DMCCA bolsters and refines the CMA's role in consumer protection – it has not created it. Consumer protection and competition issues often go hand-in-hand. Markets function competitively where entities compete with each other to offer their products and/or services at the best prices and terms for customers / consumers. If consumers feel emboldened to utilise their purchasing power, – i.e., without fear of falling victim to unfair practices – this reinforces and vindicates competitive markets. Thus, effective competition often engenders robust consumer protection (and vice versa).³ For this reason, the CMA has long been active in monitoring and enforcing the consumer protection rules in the UK.

As an illustration of this, the CMA is already empowered to investigate businesses suspected of engaging in unfair commercial practices. Indeed, the CMA is currently engaged in a number of such investigations. For example, the CMA is investigating the Wowcher Group over a number of suspected unfair practices, such as their use of countdown timers and so-called "urgency claims",⁴ which the CMA believes are unduly encouraging consumers to make hasty purchasing decisions. The CMA is also investigating complaints about providers offering will-writing, online divorce and pre-paid probate services.⁵ Outside active investigations, there is a plethora of guidance documents available on the CMA's website for both firms and consumers on consumer protection. These guidance documents cover how consumer protection can be identified and enforced in the context of different areas of the UK economy.⁶

However, the CMA has faced limitations in its role in monitoring and enforcing consumer protection measures. For instance, it has not been able to require firms to cease infringing consumer protection laws without obtaining an enforcement order from a civil court. The CMA has not had equivalent powers to sanction consumer protection laws to the same

extent that it can do so vis-à-vis infringements of competition law. Further, the CMA has come up against challenges, particularly in the UK's digital markets, where new and innovative ways of infringing consumer rights have been perpetrated without the relevant laws being able to keep pace.

This is where the DMCCA comes in.



Enhanced consumer rights under the DMCCA

Overview

The DMCCA looks to improve the transparency and clarity of information provided to consumers. The purpose of this is to avoid firms engaging in unfair commercial practices, which the DMCCA expressly prohibits.⁷ Unfair commercial practices are defined as behaviours which lead ordinary consumers to make transactional decisions that they otherwise would not have made as a result of misleading actions or omissions, aggressive practices, or contraventions of professional diligence.⁸

"Buyer beware" applies, but consumers must receive sufficient information to make informed purchasing decisions and the DMCCA seeks to prevent any opaqueness (intentional or otherwise) surrounding the terms at which products and/or services are offered to consumers.

³ CMA. Consumer protection: enforcement guidance. 17 August 2016. Para 2.2. Available at: [CMA58: Consumer protection - enforcement guidance \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/558481/cma58_consumer_protection_enforcement_guidance.pdf)

⁴ In short, these practices create an impression (perhaps falsely or misleadingly) that a consumer, when browsing a company's website for (e.g.,) a particular product, is at risk of missing out on their intended purchase because there is purported high demand and limited stocks left. This is enforced by pop-up messages proclaiming things like "Time is running out!" and "Don't miss out!".

⁵ See the case page at: [Will-writing and other unregulated legal services - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/cases/will-writing-and-other-unregulated-legal-services).

⁶ These areas include cancelling goods or services, car rental, care homes, children's online games, heat networks, higher education, letting residential property, online dating, online gambling, online hotel booking, online reviews and endorsements, secondary ticket websites and supermarket and food pricing. [Consumer protection guidance - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/publications/consumer-protection-guidance)

⁷ Section 225 of the DMCCA.

⁸ Ibid.

Given that such a high proportion of consumer purchasing has shifted online and away from traditional bricks-and-mortar stores, the DMCCA inevitably has a focus on protecting consumers against unfair practices in the digital space. However, it is a mistake to think that the consumer protection rules apply only to digital firms. The DMCCA is, in many ways, constructed using existing consumer protection rules that have been transposed across into this new legislation. For instance, the DMCCA revokes the CPRs but carries over 31 unfair practices that were originally set out in the CPRs⁹ (such as displaying a quality mark without the necessary authorisation or falsely stating product availability) and supplements this list with protections tailored to digital markets. Moreover, the DMCCA reaffirms the position that the CMA will continue to have responsibility for certain aspects of the CRA and the Consumer Credit Act 1974 (whilst making certain amendments to both sets of legislation). The full breakdown of existing consumer protection laws that the CMA is empowered to enforce under the DMCCA is set out in Schedule 16 of the DMCCA. These existing rules that are incorporated into the DMCCA go far beyond just digital markets.

If any firms are found to be engaging in any of the unfair practices included in the DMCCA, such behaviour will be deemed automatically unfair in all circumstances and firms can be subject to penalties / enforcement measures.

New protections

The most notable new consumer protections introduced by the DMCCA are:

1) Fake Reviews

Fake reviews are those which do not present a genuine consumer experience of a service or product because, for example, they may have been uploaded by a representative of the relevant business or by others at the business' request. Clearly, the risk involved in such a practice is that consumers receive a false or misleading overview of a firm's products and/or services, such that they may make a purchasing decision that they would not have made without exposure to the fake review(s).

The DMCCA contains various elements aimed at minimising the misleading impact that fake reviews have on the decision-making process taken by consumers online, which include prohibitions on:

- (a) Submitting or commissioning fake reviews or a review which conceals the fact that it has been incentivised;
- (b) Publishing reviews in misleading ways; and
- (c) Failing to take reasonable and proportionate steps as are necessary for the purposes of preventing the publication of fake, misleading or incentivised reviews and failing to remove any fake reviews from publication.¹⁰

The last element requires firms to take proactive steps to protect their consumers online by preventing the publication of, or expeditiously removing, any spurious reviews. This is particularly vital in the current climate of AI-generated and deepfake postings. Additionally, reporting mechanisms will be introduced to allow consumers to highlight suspicious reviews of their own accord.



2. Drip Pricing

Drip pricing is when a consumer is shown an initial or 'headline' price for a product or service with additional fees "dripped" down during the checkout process, such that the final price is significantly elevated.

The DMCCA expressly prohibits drip pricing as an unfair commercial practice, since it removes price transparency and complicates consumer decision-making. Firms will now be required to show price breakdowns at the outset, with all mandatory fees, such as VAT or booking fees for tickets, to be included in the headline price. Further, variable prices which cannot be calculated at the outset must still be identified to customers at the headline stage, with an

⁹ These are set out in Part 4, Chapter 1 of the DMCCA.

¹⁰ Ibid, Schedule 20.

explanation of how the final price will be calculated.

Secondary legislation may be introduced to clarify the position on optional additional fees, such as seat or hotel upgrades for travel bookings.

3. Subscription Contracts

Subscription contracts are included as a separate chapter in the DMCCA, highlighting the significant risk that they pose to consumer choice and informed consent online. It considers consumer protection in relation to: (i) contracts for an automatically recurring service or supply of goods for indefinite or fixed periods of time; and (ii) free trials or reduced fee periods where prices automatically increase at a later date, in both cases unless the consumer actively takes steps to terminate the contract. These auto-renewal and price increase practices take advantage of the loss of control that consumers experience in digital markets. The DMCCA thus introduces reforms focused on improving the information provided to consumers in order to improve consumer decision-making and reduce exploitation by firms.

Firms utilising subscription contracts will now have to consider:

(a) Pre-contract information requirements

The DMCCA defines 'key pre-contract information' and 'full pre-contract information' as separate categories of information that must be provided, or made available, to a consumer prior to their signing up for any contract. This includes information on how to cancel a subscription (including applicable notice periods) and any reserved rights for the relevant firm to change the amount or frequency of subscription payments. Notably, the firm must require, as a final step, express acknowledgement from the consumer that they understand the obligations that will be imposed on them.

(b) Cooling-off rights

The intention behind cooling-off rights is to give consumers the right to cancel a contract, without reason and without penalty, during a short time period once the contract has been initially executed. These rights allow consumers the option of changing their minds – it is no

longer an unyielding case of "you click, you buy".

The 'initial cooling-off period' is 14 days commencing on the date that the contract was entered into. A 'renewal cooling-off period' will apply: (i) after a free trial or reduced fee period expires; and (ii) after a renewal where the consumer will not be liable for another payment until after 12 months, and the firm will need to provide reminders of when a renewal cooling-off period begins.

(c) Reminder notices

These are intended to mitigate situations where consumers forget to terminate subscriptions. It has long been felt that firms have been able to exploit consumers for further payments when they forget to actively cancel a subscription or repeat purchase orders. Such practices reduce consumers' desire to engage in online purchasing, which may ultimately reduce their countervailing buyer power.

As such, firms will now be required, for instance, to send reminders to consumers when a free trial or reduced fee period is set to expire and the first fullpayment will become due.

(d) Termination rights

These look to simplify the process of termination for consumers, so that only steps which are reasonably necessary to end the subscription are required. This means attempts to invite the consumers to try alternative products or further deals are to be minimised. The ideal situation here is that a consumer will be able to communicate their desire to end the contract "by [simply] making a clear statement".¹¹

Guidance from the DMCCA as to what is deemed unreasonable in these circumstances include the inclusion of excessive and/or unnecessary steps in the termination process (e.g., completing mandatory text boxes or providing further information) or requiring consumers to actively contact or phone a firm's consumer services team in order to terminate contracts (particularly those entered into online).

4. Secondary Ticketing

This relates to the harm caused to consumers when fraudulent tickets are re-sold online, commonly at excessive mark-ups compared to

¹¹ Section 260(6) of the DMCCA.

the price that was offered by the primary sellers. The DMCCA considers the need for additional enforcement in this area, requiring that a firm must not permit tickets for resale unless they can provide evidence of the proof of purchase or title to the tickets. Firms are also prevented from selling more tickets than can be purchased from the primary sellers.

The inclusion of secondary ticketing in the DMCCA highlights the intention of the CMA to better regulate and penalise this behaviour which will hopefully deter firms and minimise the risk to consumers.

5. Consumer Savings Schemes

Consumer savings scheme contracts are defined in the DMCCA as contracts under which a consumer makes payments which are credited to an account, held by the business, which provides a fund for redemption at a later date for goods, services or digital content.¹² In this manner, they are a form of savings for businesses by deferring payments they must otherwise make to consumers.

The DMCCA looks to protect consumers entering into these contracts in two primary manners. Firstly, by requiring firms to reduce the level of encouragement or marketing that incentivise consumers to redeem funds in this way, as this may not be in their best interests. Secondly, and more crucially, insolvency protections are required, which means firms must offer and maintain insurance or trust arrangements to mitigate any consumer loss incurred if the firm becomes insolvent.

Consumer Enforcement

Overview

The DMCCA has redesigned the consumer enforcement regime such that, for the first time, the CMA is empowered to unilaterally enforce consumer protection laws without having to seek a court order to do so. The power of the courts is not removed – rather, both the judiciary and the regulator will be responsible for enforcing specific consumer protection legislation, with the relevant legislation allocating powers to each according to their respective capabilities and expertise.¹³ In some cases, the courts may be better placed to act than

the CMA (and vice versa), particularly given that some of the most egregious breaches of consumer protection laws remain subject to criminal penalties.

In addition to refined enforcement powers, the DMCCA clarifies the position on the use of alternative dispute resolution ("**ADR**") and provides information on how consumers can seek direct redress from firms engaging in unfair practices. Individuals will also be able to apply to court for an online interface notice or order¹⁴ to be made against a firm. This will require firms to amend their online interfaces to remove, restrict or modify content.

All of this is likely to boost co-operation between the courts and the CMA, reducing delays and ultimately asserting a fairer balance between consumers and firms.



CMA Enforcement powers

The DMCCA empowers the CMA to enforce consumer protection laws in the same manner as the competition laws. Indeed, just as unfair consumer practices are prohibited under the DMCCA – such as anti-competitive agreements and the abuse of a dominant position are prohibited under the Competition Act 1998 – so too will the CMA's enforcement powers vis-à-vis consumer protection now be brought up to speed with its powers in the competition space. The CMA can now issue decisions, gather information (e.g., by issuing requests for information ("**RFIs**") and impose structural and/or behavioural measures to address unfair consumer practices.

Most significantly of all, the CMA will now be able to impose fines of up to 10% of a company's worldwide

¹² Section 282 of the DMCCA.

¹³ The relevant consumer protection legislation is listed in Schedule 14 (for the court-based regime) and in Schedule 15 (for the CMA-administered regime) of the DMCCA.

¹⁴ Sections 160 and 184 of the DMCCA.

group turnover for breaches of the consumer protection laws. The ability to levy such a high fine – which has always been the most significant deterrent for firms in the CMA's arsenal when it comes to antitrust – is now extended to consumer protection enforcement. Furthermore, the CMA is empowered to issue fines for any infringements relating to the exercise of its enforcement powers. In particular, the CMA can impose fines of: (i) up to £150,000; or (ii) 5% of a company's global annual turnover, for breaching any undertakings given to the CMA. The CMA can also impose fines for providing false or misleading information (£30,000 or up to 1% of global annual turnover).

The CMA are also granted the right to impose 'enhanced consumer measures' against an infringing business, such as requiring firms to improve measures related to redress, compliance or choice for consumers. In conjunction with provision for ADR and online interface orders (mentioned above), this highlights a core element of the DMCCA as strengthening the power of consumers in navigating the consumption of online content. For example, firms facing such measures may be required to pay compensation that is determined as just and reasonable by the CMA or otherwise offer alternative redress to affected consumers.

Extra-territorial Reach

It should be noted too that, commensurate with antitrust enforcement powers, the CMA will have extra-territorial reach in this area. In practical terms, this will allow, for instance, the CMA to issue RFIs to entities or individuals which are incorporated or domiciled outside the UK.

Appeals

Firms and/or individuals can challenge any CMA enforcement actions by appeal to the High Court. Such appeals can be made "on the merits", meaning that, unlike in other areas of the DMCCA (such as decisions taken vis-à-vis firms designated with strategic market status ("**SMS**")), appellants are not hamstrung by limiting appeals to judicial review standards only (where it must be shown that the CMA breached a procedural obligation, for example). Rather, the substance of the CMA's decision – including its underlying bases for determining a commercial practice to be unfair – can be legitimately challenged.

Class actions remain limited to competition claims

We noted in our briefing on the DMCCA's competition changes that, contrary perhaps to the hopes of some

stakeholders, the DMCCA did not ultimately include an amendment that would have overturned the *PACCAR* judgment handed down by the Supreme Court last year. This ruling has jeopardised the funding arrangements for CPOs, a form of group action similar to class actions in the U.S. which are aimed at seeking collective address for victims of competition law infringements.

During the DMCCA's passage through the UK Parliament, a proposed amendment was tabled by Sir Robert Buckland that would have extended the scope of the existing CPO regime to allow such claims to be brought by victims of consumer protection violations too. This amendment would have significantly extended the jurisdiction of the Competition Appeal Tribunal ("**CAT**") vis-à-vis the types of CPOs that could be brought before it.

However, the Buckland amendment did not survive legislative scrutiny and has not ultimately made it into the DMCCA. Consequently, any parties seeking collective address pursuant to infringements of consumer protection laws will need to bring such claims as a GLO or a representative action, more traditional forms of litigation that have far less flexibility for multiple claimants than CPOs.

Comment and next steps

The DMCCA introduces far-reaching reforms to the UK's consumer protection landscape. It is hoped that the DMCCA will protect consumers, particularly in online marketplaces, by deterring exploitative and unfair practices, supplemented by a more efficient enforcement process and meaningful penalties by way of punishment and deterrence. All of this is intended to give the CMA the teeth to protect consumers and encourage firms to adopt appropriate protections for consumers.

Most of the changes introduced by the DMCCA will not take effect until later in the year, likely in the autumn. The provisions relating to subscription contracts are not scheduled to come into force before spring 2026. In the meantime, the CMA intends to issue more detailed guidance documents and supplementary rules to help both businesses and consumers prepare for the new legislative changes.

It will be very important for firms – particularly those active in supplying their products and/or services to consumers via their own websites and/or other online channels – to conduct a thorough review of their practices and understand whether they could be at risk of infringing the new (and, indeed, existing) consumer protection laws. For instance, firms should consider whether they will need to: (i) improve their processes and policies to identify

possible fake reviews of their products and/or services (which may have been posted online); (ii) modify their content to enhance transparency; and/or (iii) revise the terms at which they offer their products/services, in order to remove any hidden or otherwise exploitative terms. Firms may also benefit from tailored training on the DMCCA and its specific provisions in order to understand the changes being made to the consumer protection landscape in the UK and how their particular business could be impacted.

Stephenson Harwood is well placed to advise firms regarding compliance with consumer protection legislation and in dealing with CMA investigations. We would be delighted to provide our expertise to those seeking to navigate this developing and recently strengthened area of law.

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We hope that you find this update both useful and interesting. If you have any comments or would like to learn more about this topic, please get in touch with either your usual SH contact or any member of our Group Actions and Competition Team.



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