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CMA'S NEW CONSUMER PROTECTION POWERS AND AI: 10 QUESTIONS EVERY BUSINESS SHOULD BE ASKING

AI IS CHANGING THE RISK LANDSCAPE

AI offers significant opportunities to improve marketing, customer experience, pricing, innovation and operational efficiency. But as businesses use AI to engage with customers and make commercial decisions, it is also creating new consumer protection and competition law risks.

The starting point is clear - businesses remain legally responsible for the outputs, decisions and conduct of the AI systems they deploy, including where those systems operate with limited human involvement or are supplied by a third party. Using AI does not outsource legal responsibility. The UK's Competition & Markets Authority ("**CMA**") has made clear that businesses remain responsible for what their AI agents do, just as they are responsible for their employees, including where the AI has been designed or supplied by a third party.

The consequences of getting this wrong have also changed significantly. Since April 2025, the CMA has been able to investigate and enforce against breaches of consumer law directly under the Digital Markets, Competition & Consumer Act ("**DMCCA**"). The CMA can impose fines of up to 10% of global turnover and require businesses to

compensate consumers and change the way they sell products and services.¹

Consumer law is no longer simply a marketing or compliance issue. As AI becomes embedded in the way businesses communicate, price, sell and interact with customers, understanding and controlling what AI is doing is increasingly becoming a board-level regulatory, financial, and reputational risk.

KEY CONSUMER PROTECTION RISK AREAS

AI-Generated Marketing and Claims

Businesses are increasingly using generative AI to draft advertising copy, product descriptions, website content, social media campaigns and comparative or sustainability claims.

The efficiencies can be considerable, but AI can also generate statements that are inaccurate, exaggerated or cannot be substantiated. A misleading claim does not become lawful simply because it was generated by AI rather than written by an employee.

The practical question is therefore not simply whether AI is being used, but whether effective checks prevent inaccurate or unsubstantiated content from reaching consumers, and who is accountable for those checks. A claim can be misleading even if no one intended to mislead.

¹ The CMA has already issued warning letters to more than one hundred businesses, imposed multi-million-pound fines, ordered consumer refunds, and launched investigations across multiple sectors.

Its focus extends beyond advertising, and investigations span pricing practices (e.g. drip pricing), online customer journeys, automatic opt-ins, online/fake reviews, and consumer contract terms.

Personalisation, Consumer Choice and Online Journeys

AI enables businesses to tailor communications, personalise product recommendations, improve search results, customise offers and make the overall customer experience more seamless. Done properly, personalisation benefits both businesses and customers.

But the same technology can influence consumer behaviour in less transparent ways. Consumer protection authorities are concerned that greater personalisation may make it harder for consumers to understand why particular products, prices or options are being presented to them and can potentially amplify problematic online choice architecture or “dark patterns” – undermining genuine consumer choice.

Risks can arise where AI amplifies problematic online choice architecture, including artificial urgency, misleading discounts, pre-selected options, hidden information or design features that steer consumers towards a particular outcome. The practical question is whether AI is helping consumers make informed choices or influencing them in ways they may not understand.

AI Chatbots and Customer Communications

Businesses are also increasingly deploying AI agents and chatbots to deal directly with customers, including to answer questions, recommend products, deal with complaints and process refunds. Benefits include reduced costs, 24/7 support, scalability and improved customer experience.

However, AI chatbots create particular legal risks because customers often treat chatbot statements as official company communications. Yet AI agents can provide incorrect information about prices, product characteristics, contractual rights, refunds or cancellation, provide information about a policy or right that does not exist, or treat equivalent customers inconsistently.

The CMA has made clear that businesses remain accountable for their AI agents' outputs and actions. Businesses therefore need appropriate safeguards around what their AI agents can say and do, together with testing, monitoring and routes for human intervention.

AI Pricing and Competition

AI and algorithmic tools can allow businesses to respond more quickly to changing demand, offer more relevant deals and make pricing decisions more efficiently. However, their use can also create consumer protection and competition law risks, particularly where businesses do not understand what data the tools use, how recommendations are generated or how prices are presented to customers.

Consumer protection risks

- + **Pricing transparency.** Dynamic pricing is not inherently problematic. However, businesses must ensure that consumers are given clear, accurate and timely information about the price they will pay. Risks can arise where mandatory charges are omitted, prices change during the purchasing process, or products are presented as being cheaper than they really are.
- + **Personalised prices and offers.** AI may allow prices or promotions to be tailored to particular consumers or customer groups. Businesses should understand the basis on which different prices or offers are generated and consider whether consumers are being treated fairly and given the information they need to make an informed choice.
- + **Online choice architecture.** AI can also influence how prices, discounts and purchasing options are presented to consumers. Risks may arise where AI-enabled interfaces use misleading discounts, artificial urgency or scarcity claims, pre-selected options, hidden information or other design features that steer consumers towards a particular purchase or make it harder to compare alternatives. Businesses should consider not only whether the price itself is lawful, but whether the way it is presented enables consumers to make a genuinely informed choice.

Competition law risks

Algorithmic pricing may also create competition law risks if it reduces independent decision-making or facilitates coordination between competitors. The use of AI or pricing software is not itself unlawful, but businesses remain responsible for how those tools are designed, supplied and used.

Risks may arise in a number of ways:

- + **Using algorithms to implement collusion.** Competitors may agree to coordinate prices or avoid undercutting one another and use pricing software to implement, monitor or enforce that arrangement. Using an algorithm does not make an otherwise unlawful agreement legitimate.
- + **Shared providers and indirect information exchange.** Competing businesses may use the same pricing provider, algorithm or data pool (i.e. hub). This can create risk if competitively sensitive information from one business influences the prices or recommendations provided to another, or if the hub facilitates coordination between its customers. Especially if the users of the hub delegate pricing decisions to the hub or receive from the hub recommendations (based on commingled data) that can be reverse engineered. The hub may allow businesses to increase prices above competitive levels, maximising collective profits. Indirect information exchange through third parties, such as algorithm providers, can constitute illegal, anti-competitive conduct. Businesses should understand what data is being used, whether it is pooled with competitors' data and how pricing recommendations are produced.
- + **Predictable pricing algorithms.** Algorithms may be designed to monitor competitors and respond rapidly to price changes. In some markets, this may reduce competitive uncertainty, reinforce price leadership or make it easier to detect and respond to discounting. An infringement of the competition rules still requires an agreement or concerted practice, but these outcomes may nevertheless attract regulatory scrutiny.
- + **Autonomous AI systems.** More advanced AI tools may learn to produce coordinated or supra-competitive outcomes without being expressly instructed to do so. The legal and economic analysis in this area is still developing, but businesses should not assume that a lack of human instruction removes the risk. Appropriate testing, monitoring and safeguards may be required, particularly where AI has autonomy over commercially significant pricing decisions.

10 QUESTIONS EVERY BUSINESS SHOULD BE ASKING

Against that background, how confident would your business be answering these ten key questions today?

1. **Marketing and Claims.** Could AI-generated product descriptions, comparative claims, reviews, testimonials or sustainability claims reach consumers without anyone checking whether they are accurate and can be substantiated?
2. **Accountability.** Who within your organisation is ultimately responsible for the legal and regulatory risk if an AI system gets something wrong?
3. **Personalisation.** Are AI systems personalising recommendations, offers or customer journeys in ways that could improperly steer consumers or make it difficult for them to make informed choices?
4. **Transparency.** Would consumers understand when they are interacting with AI or receiving AI-generated content, recommendations or decisions where this is relevant to the choices they make?
5. **Customer Journeys.** Could your AI-enabled website, app or online choice architecture create artificial urgency, misleading discounts, inappropriate default choices or other dark patterns?
6. **AI Agents.** Do you know what your chatbots and AI agents are actually telling customers and doing on their behalf, including in relation to prices, terms, refunds and cancellation rights?
7. **Appropriate Guardrails.** Do you understand how internally developed and externally supplied AI tools operate, what data they use, how they are tested and monitored, and whether you can intervene quickly if they produce harmful or unlawful outcomes?
8. **Pricing.** If AI or algorithmic tools are involved in setting prices or promotions, can you explain how the resulting prices are determined and demonstrate that mandatory charges, discounts, savings claims and personalised offers are accurate, transparent and fair?

9. **Algorithmic coordination.** Could your pricing tools receive or use competitors' confidential information, draw on a shared data pool, or generate recommendations influenced by data from competing businesses? What safeguards ensure that your business continues to make its pricing decisions independently?
10. **Internal records.** If the CMA investigated your use of AI tomorrow, could you demonstrate how your AI risks were assessed, who approved the system, what safeguards are in place, how outputs are monitored and how quickly you could stop and remediate harmful conduct?

WHY DOES THIS MATTER NOW?

The CMA is looking at AI through both sides of its mandate: protecting consumers and protecting competition.

It has already issued dedicated guidance to businesses using AI agents and has separately highlighted the evolving competition risks associated with AI and algorithmic pricing.² It is also developing its own technological capability to use AI to identify potential consumer and competition-law issues more rapidly and at greater scale.

The CMA's recent enforcement activity suggests a clear direction of travel. Businesses should expect increasing scrutiny of the use of AI tools in connection with: pricing transparency and drip pricing;

- + online choice architecture and “dark patterns”;
- + fake reviews, rating systems, and consumer trust mechanisms; and
- + consumer-facing contract terms.

Your organisation is accountable for AI-generated outputs used in your products and services, even if your AI is provided by an external technology supplier.

It is no longer simply: “Are we using AI”? It is increasingly: “Do we understand what our AI is doing, have we identified the legal risks and could we demonstrate effective governance to a regulator?”

HOW STEPHENSON HARWOOD CAN HELP

Our Consumer Regulation, Compliance and Dispute Team can help businesses identify and manage AI-related risks across the following areas:

- + AI governance, compliance audits and risk management
- + Advertising, marketing, claims and personalisation
- + AI agents, customer journeys and online choice architecture
- + Pricing, promotions and consumer contracts
- + Algorithmic pricing, information exchange and competition law risk
- + Third-party AI procurement and governance
- + Regulatory investigations, enforcement and remediation

If any of the questions above give you pause for thought, we would be delighted to discuss them with you.

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² See [Complying with consumer law when using AI agents - GOV.UK](#) and [Pricing algorithms and competition law: what you need to know - Competition and Markets Authority](#)