



A New Era for Consumer Law and Regulation

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Consumer law and regulation has been thrust into the limelight in recent months. The main reason for this is the introduction of the Digital Markets, Competition and Consumers Act (**DMCC Act**), which received Royal Assent on 24 May 2024. The changes introduced by the DMCC Act are significant and will result in both increased consumer rights protection, and a strengthened enforcement process which seeks to crack down on unfair practices. As a result, the regulatory risk in the business-to-consumer space is likely to rise quite significantly.

The most significant change being introduced by the DMCC Act is that, for the first time, the Competition and Markets Authority (CMA), the main consumer regulator, will have wide-ranging powers to investigate suspected breaches of consumer law and unilaterally impose significant fines linked to a business' global turnover. These powers are wide-ranging and similar to the ones it exercises for competition law infringements. Prior to now the CMA had to go via the courts for a business to face fines, a power that was exercised infrequently.

Another notable change is that the DMCC Act will introduce a new, stand-alone regime applicable to 'subscription contracts' (i.e. contracts with consumers where they pay for goods, services or digital content that recur automatically, even if there is an initial free period). New subscription contracts will not be subject to the requirements under the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 and instead, the DMCC Act contains a number of prescriptive requirements for businesses to follow. For example, businesses will be required to: (i) provide consumers with certain pre-contract information; (ii) send reminders of upcoming renewals; and (iii) comply with rules around termination of subscription contracts. The key point is that consumers will need to be able to easily cancel a subscription contract. For instance, the DMCC Act states that traders will need to make arrangements to ensure that consumers can end their contract *"in a way which is straightforward and without having to take any steps which are not reasonably necessary for bringing the contract to an end"*.

The DMCC Act will also have an impact on the Advertising Standards Authority's (**ASA**) Advertising Codes (the UK Code of Broadcast Advertising and the UK Code of Non-Broadcast Advertising). The [ASA has recently announced](#) that it is considering any necessary amendments to the Codes and will consult on and publish those in due course. The reason for the review is that the majority of the existing rules on misleading advertising derive from the Consumer Protection from Unfair Trading Regulations 2008 (**CPRs**). Although the DMCC Act revokes the CPRs, it largely reinstates them with some changes. For example, the DMCCA Act introduces new prohibitions designed to combat fake reviews and so-called 'drip pricing' (which occurs when consumers are shown an initial price, but additional charges are added as they progress through the transaction).

Separately, but relatedly, [OFCOM has recently announced](#) that from January 2025, it will ban mid-contract price rises linked to inflation and will instead require telecoms providers to state any in-contract price increases up-front in pounds and pence. This will be welcome news for consumers but represent a restraint on flexible pricing to cover rising costs for business.

Whilst precise timings have not yet been confirmed by the Government, the main consumer law provisions of the DMCC Act are expected to come into force in late 2024 (spring 2026 for the new subscription contracts regime) and the CMA expects its new enforcement powers to come into force in 2025. In preparation for this, the CMA published draft [procedural rules](#) and [guidance](#) explaining how the CMA will generally use its new direct enforcement powers under DMCC Act and has [launched a consultation](#) asking stakeholders for feedback on the CMA's proposed approach (the consultation closes on 11 September 2024). For instance, the guidance sets out the CMA's proposed approach regarding its new powers to impose penalties. The draft guidance indicates that the CMA will impose monetary penalties in support of specific objectives that are set out in the guidance (such as "[to reflect the seriousness of infringements and breaches that the CMA finds to have occurred](#)"), in a way that is proportionate and which provides a meaningful deterrent, both to the offending party and to others.

It is worth noting that the CMA has investigated a number of companies for suspected breaches of consumer law in recent years. One of the [CMA's main focus](#) has been to review the way businesses present information and choices to consumers online (so-called 'online choice architecture'). For example, the CMA recently secured undertakings from the [Wowcher Group](#) and [Simba Sleep](#) relating to the use of urgency claims and price reduction claims. Under the new government and with the DMCC Act's enhanced powers, we anticipate the regulator becoming even more active. Earlier this week, the consumer group Which? asked the CMA to "urgently clarify" whether the dynamic or "drip" pricing model used by online ticket platforms to sell concert tickets is legal under existing competition and consumer protection law ("drip pricing" – i.e. the practice whereby additional costs are added to the originally displayed price – being one of the new prohibitions introduced by the DMCC Act).

Key takeaways: as a result of the introduction of the DMCC Act and the increased regulatory risk, consumer facing businesses should actively review its consumer-facing T&Cs and its trading practices to ensure they are compliant with the law. The CMA's investigation into the Wowcher Group also highlighted the importance of putting in place internal/external facing customer service policies, scripts, decision trees, trading manuals, procedures and staff training to ensure customer service teams understand consumers' rights.

Competition law reforms

As explained in [our previous blog](#), the DMCC Act will also introduce material updates to the existing competition law regime in the UK. Competition law enforcement will be enhanced in three key ways. Extra-territorial effect will be given both to the Chapter I prohibition on anticompetitive agreements and to the CMA's investigative powers, whereby the CMA will be able to compel foreign-domiciled companies to produce documents held outside of the UK, while the CMA's information-gathering powers will be strengthened also in respect of domestic investigations. Perhaps more notable in this regard is the significantly higher fines for procedural infringements – increased from a fixed cap of £30,000 to 1% of the global turnover, while daily fines will increase from £15,000 to 5% of the global daily turnover. In terms of changes to the UK merger control regime, the DMCC will update the CMA's jurisdictional thresholds,

and will introduce a new no-increment share of supply test aimed at capturing so-called 'killer acquisitions', a new safe harbour for 'small mergers' and a distinct merger reporting regime for tech companies designated as "Strategic Market Status" firms.

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