

New CMA Powers Will Change Consumer Protection Regime

By **Leonidas Theodosiou and Daniel Savrin** (March 24, 2025, 2:15 PM GMT)

The Digital Markets, Competition and Consumers Act 2024, or DMCCA, with an imminent April 6 enforcement date for the Competition and Markets Authority's new so-called dual track powers, is set to transform the U.K.'s consumer protection regime.

The CMA will be empowered to impose penalties on organizations of up to 10% of global group turnover for unethical or misleading business practices.

In light of growing public and political scrutiny of certain consumer advertising and marketing practices — ranging from misleading price discounts, drip pricing and fabricated online reviews, to conduct that has been viewed as more standard in nature, e.g., unilateral changes of terms and conditions — businesses should identify high-risk areas and reinforce compliance and mitigation measures.

In this article we shall discuss the enhanced enforcement capabilities of the CMA, their implications for private legal actions, the challenges faced by U.K.-based businesses, and strategies to ensure compliance and readiness.

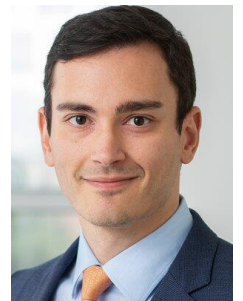
New CMA Enforcement Powers

Since the DMCCA received parliamentary approval in May 2024, government and regulatory statements have provided a clearer road map for its implementation.

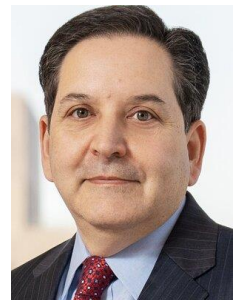
The powers give the authority the option to either proceed via the courts, as before, or to act under a direct administrative enforcement regime. The latter is exclusive to the CMA and is modeled on the CMA's competition law enforcement powers, placing consumer law infractions on par with antitrust offenses.

This means that the CMA will have the power to open and make public formal investigations in respect of suspected infringements of consumer protection laws. The CMA will have the power to compel parties to respond to its requests for information and provide evidence, subject to penalties for noncompliance. It may also request the court to issue an interim order to suspend the alleged infringing conduct pending the investigation.

The CMA will be able to impose fines of up to 10% of global turnover or close the investigation with commitments. In either case, the CMA decision will be public.



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The CMA will also retain the power to apply enhanced consumer protection measures, including:

- Compelling companies to offer redress to consumers who have suffered harm as a result of the infringing conduct;
- Imposing compliance measures, such as the appointment of a compliance officer, or conducting audits; and
- Requiring companies to disclose their infringing status or other information to consumers.

Enhanced consumer measures can and will likely be applied in addition to financial penalties.

Examples of commercial practices expected to attract regulatory attention under the new direct enforcement regime include the following:

- Unilateral variation of terms, e.g., reserving the right to change contractual terms or prices at any time without the consumer's express agreement to the subject changes;
- Inadequate pricing disclosures, e.g., advertising false or inflated discounts, where a higher reference price was never genuinely in effect, using drip pricing that initially omits mandatory add-ons — referred to by the U.S. Federal Trade Commission as junk fees, or failing to clearly outline all fees from the outset;
- Unfair default or penalty charges, e.g., imposing excessive charges for cancellations or damages, particularly where fees are not transparently disclosed;
- Misrepresentation of consumer rights, such as restricting or concealing statutory protections, e.g., cooling-off periods, limiting the right to return faulty goods, or failing to inform consumers about available remedies or complaint procedures;
- Misleading product or service claims, such as presenting goods as environmentally friendly or sustainable, without adequate substantiation, overpromising product capabilities, or otherwise misrepresenting key or material attributes of the product or service;
- Aggressive or pressure-based sales tactics, such as suggesting false scarcity to rush consumers into purchases, using misleading countdown timers, or creating an impression that an offer is limited as to time or quantity when it is not;
- Subscription traps, such as making it difficult for consumers to cancel or opt out of recurring contracts or lacking clear information on auto-renewals and termination rights; and
- Deceptive endorsements or reviews, such as generating or manipulating online reviews, testimonials or endorsements to provide an inaccurate portrayal of consumer satisfaction.

The CMA's broadened powers coincide with the heightened public scrutiny of practices, such as drip pricing, misleading sustainability claims and aggressive sales or subscription tactics. The CMA has long focused on these issues, publishing several sector-specific inquiries over recent years. Notably, it recently finalized guidance for recommendation-platform businesses,[1] and issued compliance advice on topics ranging from unregulated legal services[2] to greenwashing in the fashion industry.[3]

When assessing risk and updating compliance procedures, organizations operating in these or similarly regulated areas should review their practices to ensure alignment with both the new DMCCA framework and any relevant sector-specific guidelines.

Impact On Private Litigation

Under the new regulatory regime, private litigation may rise substantially. Consumers could launch more class actions following CMA decisions that have found a breach of consumer protection laws.

Traditionally, collective actions for consumer protection infringements have been uncommon. However, by relying on a CMA decision that a company breached consumer law, plaintiffs will argue that they have strong evidence and a valid basis for their claims, making it easier to pursue damages.

Under the Civil Procedure Rules, consumers have two main routes before the High Court: opt-out representative actions under Civil Procedure Rule 19.8 and opt-in group litigation orders under Civil Procedure Rule 19.22.

In either scenario, the evidentiary burden placed on claimants would be significantly diminished once a CMA finding is invoked. This reduction in proof requirements may prompt an increase in consumer-led litigation, as well as encourage third-party litigation funders to back claims that appear more likely to succeed.

In practical terms, companies facing an adverse CMA decision could experience heightened pressure to settle early to avoid public exposure, escalating legal costs and reputational harm.

Risks For Businesses Operating in the U.K.

There are a number of risks U.K. companies may encounter, such as:

- The potential for burdensome regulatory investigations into suspected infringements, including extensive disclosure, known as discovery;
- Infringing businesses will face legally binding orders to cease the practice as well as material fines of up to 10% of global group turnover and up to £300,000 (\$388,000) on individuals;
- Significant reputational damage for the business, as well as implicated directors; the latter may also face a director disqualification order of up to 15 years under certain conditions; and
- Exposure to claims for damages from affected consumers, including potentially collective claims.

The CMA may also use additional compliance measures, such as issuing a warning or advisory letter, to highlight concerns about potential consumer law breaches and encourage compliance. While there is no legal obligation to respond to these letters, the CMA may consider any reply, or lack thereof, when deciding whether further enforcement action is warranted.

How to Prepare

With only days to go until the April start date, businesses — especially those in consumer-facing sectors — should carefully audit marketing strategies, pricing policies and contract terms. Particular attention

should be paid to how prices, mandatory fees and potential penalties are disclosed.

Consumer-facing documents should be reviewed and updated to align with existing and upcoming consumer protection requirements, and recurring customer concerns should be reviewed periodically to spot any underlying or systemic issues.

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[1] <https://connect.cma.gov.uk/compliance-advice-for-trader-recommendation-platforms>.

[2] <https://www.gov.uk/government/publications/unregulated-legal-services-consumer-protection-law-guidance>.

[3] <https://www.gov.uk/government/publications/complying-with-consumer-law-when-making-environmental-claims-in-the-fashion-retail-sector/complying-with-consumer-law-when-making-environmental-claims-in-the-fashion-retail-sector>.