

A WATERSHED MOMENT? CMA GAINS SIGNIFICANT NEW CONSUMER PROTECTION POWERS

On 25 April 2023, the UK Government published its long-awaited Digital Markets, Competition and Consumers Bill (DMCC Bill), which gives the UK Competition and Markets Authority (CMA) significant new consumer protection enforcement powers, in addition to establishing a new regulatory framework for digital markets and bolstering the CMA's investigative and enforcement powers in the wider UK competition space. This briefing focuses on the new consumer protection-related powers introduced by the DMCC Bill, and their key implications for consumer-facing businesses in the UK.

Consumer law reform has been on the UK Government's agenda for some time now, since at least as far back as the Department for Business, Energy & Industrial Strategy's [Green Paper on Modernising Consumer Markets](#) published in April 2018.

In the half-decade since that Green Paper, the strengthening of UK consumer law has gradually gained momentum through a sequence of other reports and publications, including, most recently, the UK Government's July 2021 consultation paper, [Reforming Competition and Consumer Policy: Driving growth and delivering competitive markets that work for consumers](#). A timeline of other key consumer law-focused milestones is provided [below](#).

Last week saw the publication of the [DMCC Bill](#), which largely aligns with the proposed reforms trailed by the [Government's response to its 2021 consultation](#) (see our [May 2022 update](#)). The reforms outlined in the DMCC Bill have been heralded by the CMA's Chief Executive, Sarah Cardell, as a "*potential [...] watershed moment in the way we protect consumers in the UK*" - but just how significant are the reforms, and how may they change the consumer protection landscape in the UK?

"This has the potential to be a watershed moment in the way we protect consumers in the UK"

Sarah Cardell, Chief Executive of the CMA

Key headlines for consumer protection

The CMA's new consumer law enforcement powers

The Government's changes to UK consumer law enforcement are one of the key aspects of the reforms and will significantly strengthen the CMA's powers of investigation and enforcement. Central to this is the introduction of an 'administrative enforcement model', whereby the CMA will have the power to issue infringement decisions for consumer law breaches and directly impose fines of up to 10% of an undertaking's global turnover, in effect bringing the regime more closely in line with the CMA's existing antitrust enforcement regime. In contrast, currently the CMA can only accept undertakings from a company under investigation or otherwise apply to court to seek an enforcement order. In addition, the CMA will be able to seek redress for harmed consumers.

Under the DMCC Bill, the CMA is also given powers to impose penalties for breaching undertakings (up to 5% of an undertaking's global annual turnover, and additional daily penalties for continued non-compliance) and for procedural breaches during CMA investigations, such as failing to comply with information requests, providing false or misleading information or destroying, concealing or falsifying evidence (up to 1% of an undertaking's global annual turnover, and additional daily penalties for continued non-compliance).

It is anticipated that the CMA's enhanced enforcement toolkit will promote swifter, direct action where the CMA identifies potential breaches of consumer law, and that the introduction of (potentially large) penalties where a breach is established will have a significant deterrent effect. Recognising feedback raised in the 2021 consultation about the potential risks associated with the CMA's new powers, the Government has, however, also made provision in the DMCC Bill for a full merits appeal to the High Court in respect of decisions that lead directly or indirectly to financial penalties, in addition to a judicial review model for other decision types.

Policy reforms

At present, there are two key pieces of consumer legislation that will be familiar to consumer-facing businesses: the Consumer Protection from Unfair Trading Regulations 2008, which cover the entire lifecycle of a consumer's transaction and prohibit misleading or aggressive practices in a consumer-trader relationship, and the Consumer Rights Act 2015, which governs the fairness of consumer contracts. Under the DMCC Bill, existing consumer protections have been updated and modernised to reflect, in particular, the boom in online shopping and significant shifts in consumer purchasing behaviours over recent years. There are four core areas of focus:

- **Fake reviews:** the Government intends to use new powers in the DMCC Bill to combat several practices related to fake reviews online. In particular, the commissioning or incentivising of a person to write or submit a fake review will be banned, in addition to offering or advertising to submit or facilitate fake reviews and posting or hosting consumer reviews without taking reasonable steps to check they are genuine.
- **Subscription traps:** a chapter of the DMCC Bill is dedicated to new measures to prevent so-called 'subscription traps', i.e. subscription models that entice consumers to sign up using free or low-cost trial periods, and then either do not alert them to the end of the trial period, auto-renew, or otherwise make it difficult for the consumer to cancel their subscription. Under the reforms, companies will be required to provide certain 'key pre-contract information' to consumers before they enter a subscription contract. They also require that consumers expressly acknowledge that they will be obliged to make payment to the trader, and that reminder notices are issued to consumers when a free or low-cost trial period is expiring and/or before auto-renewal occurs. Companies must also ensure that consumers can exit a subscription contract in a straightforward and timely manner (and that any overpayments are reimbursed).
- **Savings schemes:** the DMCC Bill introduces protections for consumers using Christmas savings clubs and similar savings schemes not covered by existing Financial Conduct Authority regulations and financial protections. Specifically, traders operating pre-payment schemes must ensure that customer funds are insulated in trusts or shielded by insurance where they are not covered by existing financial protections.

- **Package travel:** the DMCC Bill also updates and simplifies existing regulations around package travel. These reforms arrive against the backdrop of the CMA's open letters to the package travel sector during the Covid-19 pandemic, reminding them of their obligations under consumer protection law (see [10 July 2020 letter](#) and [13 May 2021 letter](#)).

What's next and how to prepare

The Government has [stated](#) that the new enforcement powers will "*come into effect as soon as possible following parliamentary approval*". It is currently anticipated that the DMCC Bill will pass into law towards the end of this year. The Government's consumer law reforms will not apply retroactively, but will instead become enforceable for breaches of the law that occur on or after the day of commencement.

With that in mind, it is vital that businesses review the reforms and understand how they will apply to their relationships with UK consumers. Non-UK companies should also be aware that, like competition law, the strengthened consumer protection laws will equally apply to them to the extent they have a place of business in the UK, carry on business in the UK, or the conduct at issue arises in the context of carrying on activities directed to consumers in the UK.

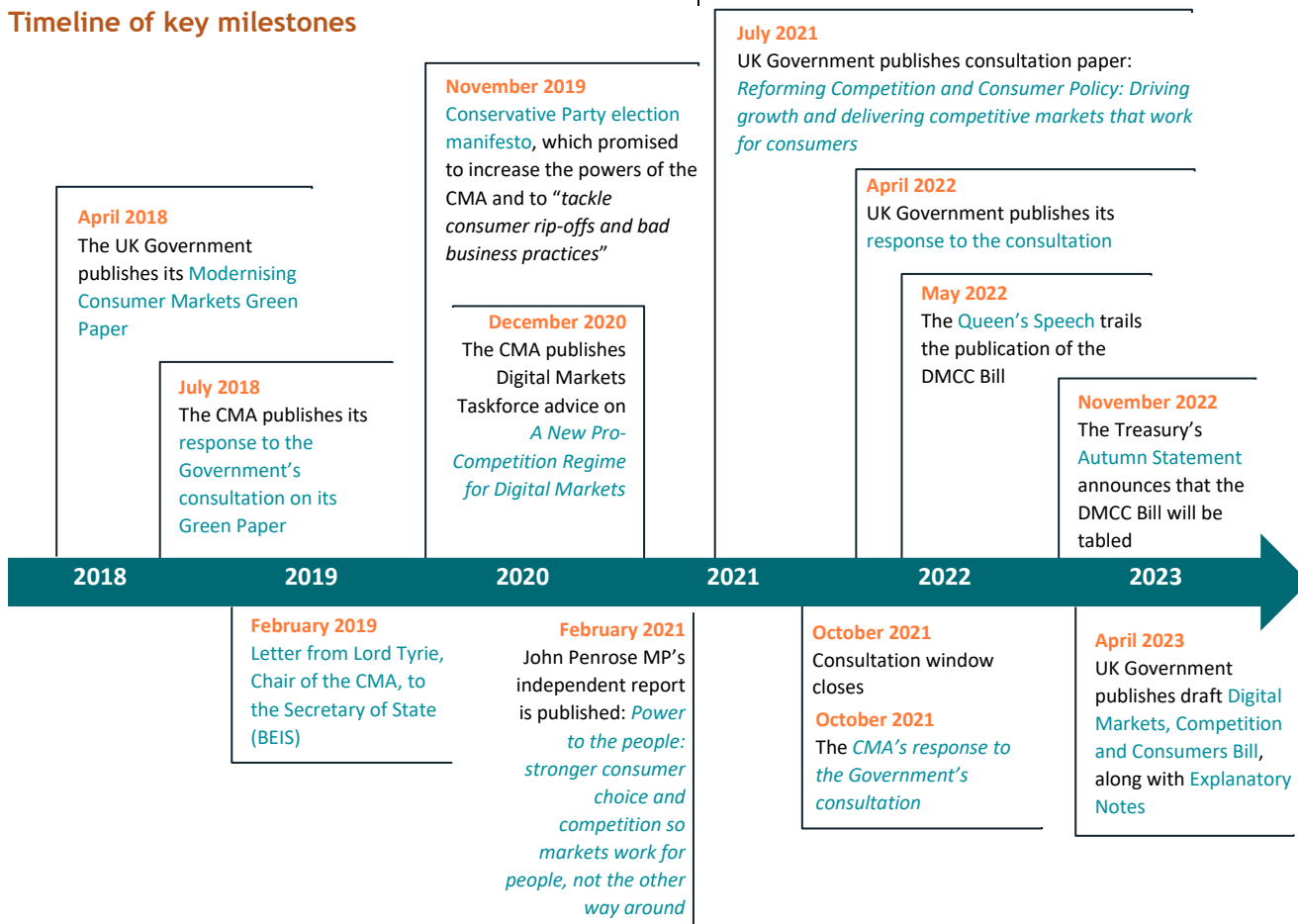
These significant reforms have not arrived in a vacuum. Prior to publication of the DMCC Bill, the CMA has been increasingly active in the consumer protection space during recent years. The publication of the DMCC Bill, does, however, firmly establish consumer law as a key enforcement priority for the CMA, and companies should expect to see the CMA using its new arsenal of investigative and enforcement mechanisms in the near future - with the CMA having the flexibility to select the most appropriate tool (e.g. antitrust vs. consumer law vs. market study) to tackle the particular concerns raised.

Against this background, companies should consider whether their existing consumer protection compliance policies need to be refreshed and updated training should be delivered to relevant business divisions, in addition to thinking about what organisational changes might be required in order to help promote compliance. It is worth noting that some of the consumer protection reforms introduced by the DMCC Bill require proactive steps to be taken by companies (as opposed to simply banning bad practices) - for example, the requirement to monitor online reviews to check they are genuine, and to send reminder notices for subscription-based products and services. Looking ahead, the Government will also publish further guidance once the DMCC Bill passes into law, which

should provide a further steer to help businesses navigate the fast-evolving consumer law landscape.

For a general overview of the DMCC Bill (including reforms relating to digital markets and the competition law framework), please refer to our [Competition & Regulatory newsletter](#).

Timeline of key milestones



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