

CMA's New Consumer Law Powers Now in Effect



Introduction

New consumer law powers for the Competition and Markets Authority (CMA) under the Digital Markets, Competition and Consumer Act (**DMCC Act**) are now in effect, aligning its consumer protection enforcement powers with its long-held competition law powers. The CMA can now:

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choose between the pre-existing court-based approach, or direct enforcement action (as with competition law investigations). Its new direct enforcement powers enable the CMA to impose fines on businesses for consumer protection breaches of up to 10% of global turnover; and/or

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take criminal action against traders that engage in the most unfair commercial practices.

The CMA's powers cannot be applied retrospectively, so fines for breaches in the early months of the CMA's new powers may start low but will rise in the years that follow.

The CMA is expected to prefer its new direct enforcement powers over pre-existing options, except where (i) a practice must be urgently prohibited (for which the CMA may seek an interim enforcement order through the courts) or (ii) it is in the public interest to pursue a criminal prosecution.



New direct enforcement regime

The CMA can now take direct action to investigate and address breaches of a wide range of consumer protection laws, including breaches of the Consumer Credit Act 1974, the Consumer Rights Act 2015 and the Sale of Goods Act 1979; as well as rules against misleading marketing, unfair trading, e-commerce regulations and package travel arrangements.

The CMA has also gained direct powers in relation to breaches of undertakings, breaches of CMA directions, provision of false or misleading information to the CMA, and non-compliance with statutory information notices.



Enforcement priorities

The CMA's guidance on exercising its new consumer powers makes clear that it will prioritise cases where "*interventions deliver high impact results*" such as where there appears to be a systemic problem.

The CMA has confirmed that early enforcement action is "*likely to focus on more egregious breaches*", including:

- ▶ aggressive sales practices that prey on vulnerability;
- ▶ providing information to consumers that is objectively false;
- ▶ contract terms that are very obviously imbalanced and unfair; and
- ▶ behaviour where the CMA has already put down a clear marker through its previous enforcement work.

CMA enforcement will be "*proportionate, consistent, targeted, transparent and accountable*" and is more likely where:

- ▶ Changing the behaviour of one business is likely to have other beneficial market-wide implications;
- ▶ There is the opportunity to set an important legal precedent; and
- ▶ There is a strong need for deterrence or compensation for consumers.



Criminal powers

The CMA's guidance explains that it is more likely to use existing criminal powers where civil action would be ineffective, and/or criminal action is justified as a wider deterrent. Examples of this include:

- ▶ Deliberate or reckless practices that are (i) deceptive, misleading or fraudulent; or (ii) aggressive, intimidating or coercive.
- ▶ Flagrant and/or persistent breaches.
- ▶ Widespread breaches that justify criminal enforcement to deliver a strong deterrent message.
- ▶ Providing false statements / documents in engaging with the CMA or other enforcement bodies.



For more information

This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:



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