January 2025

Unfair Commercial Practices guidance consultation response

Introduction

We welcome the opportunity to respond to the CMA's consultation on protection from *Unfair Commercial Practices* guidance. We aim to provide the perspective of a range of platforms, reflective of the internet's diverse landscape.

Overall, we have supported the Digital Markets, Competition and Consumers Act in its passage through Parliament, as well as the principles of online consumer protection. As the Competition and Markets Authority's powers under the Act come into force, we ask that, where possible, the regulator is proportionate and flexible in its approach.

Summary

The points made in this response offer areas of the *Unfair Commercial Practices* guidance to strengthen and clarify. Specifically:

- We call for the regulator to adopt a proportionate approach in its guidance concerning fake reviews and asks for clarification of expected responsibilities for platforms and services, beyond typical marketplaces and services dedicated to the hosting of reviews posted on third-party sites, to ensure these are proportionate to the level of risk, capabilities and model of services.

- We believe that platforms or services should be able to take different approaches to mitigating fake reviews content, based on their risk and operating model. The regulator should consider that other regulatory regimes in the UK, such as the Online Safety Act and its associated risk assessments and transparency reports, present the potential for duplication of work. The impact of cumulative UK regulation should be accounted for in its creation of moderate and proportionate guidance, which recognises where there may be potential for overlap.

- The Government has mentioned intended implementation from April 2025. There is currently little time for companies to ensure that their systems and processes are in line with any final guidance, although their responsibilities to users are a priority. We ask that the CMA allows time for platforms and services to ensure they are meeting compliance. Consideration of a staggered approach would be beneficial to ensure that companies can have open channels of communication with the regulator whilst implementing any necessary changes.

Fake reviews ban

We support the ban on fake reviews, which captures both the hosting and commission of fake reviews. However, we also call for this issue to be solved by a collaboration between law enforcement, government and regulators to address fake reviews at source, without the responsibility left to platforms that are often removed by degrees from the original issue. In this regard, we would encourage the CMA to consider the recent rulemaking issued by the US Federal Trade Commission (FTC),[1] which is focused on tackling the root of the problem - which is the buying and selling of fake reviews.

[1] FTC Rule on the Use of Consumer Reviews and Testimonials

We believe that a proportionate and risk-based approach to compliance, that recognises flexibility for varying platforms to adopt different tools and techniques, is essential. As highlighted in section B.27 of the guidance, "*There is unlikely to be a 'one size fits all' or 'tick box' approach which is appropriate for all [platforms] to deploy to prevent and remove from publication banned reviews and false or misleading consumer review information. What is appropriate for one [platform] may not be appropriate for another ...".* It is crucial that such proportionality continues in considering how the risk of fake reviews can be sufficiently mitigated by platforms.

As such, we ask for clarification on how the guidance will impact services or platforms beyond the marketplaces or services specifically dedicated to hosting reviews. Specifically, we ask the regulator to adopt a reasonable and proportionate approach in understanding such platforms' ability to discern the origin of review content. For example, this is unlikely to be possible in a discussion forum that is not specific to reviews of products and services. Any unclear obligations could impact users' speech in general forums and discussions, where products might be discussed in passing, due to uncertainty about whether such casual conversation constitutes a "review." We ask the CMA to clarify its expectations of such platforms that host forums. As noted below, we also ask that the CMA considers potential overlaps in responsibility with other regulations as services meet their obligations to user safety and protection.

We welcome the CMA's recognition that different platforms may approach risk mitigation differently. However, we ask that the regulator considers alignment with other UK regulatory regimes to avoid the duplication of work and cumulative burden of compliance for platforms. For example, we draw attention to the Online Safety Act where platforms are required to conduct risk assessments on illegal content – to include fraud, scams, and the proceeds of crime. We ask that the CMA considers potential overlap with this regulatory regime and specifies details of what is expected to comply with this guidance, ultimately clarifying if this will align with the Online Safety Act's requirements, and eliminating any duplicative obligations - especially with respect to risk assessments (B.34-39) and internal evaluations (B.48). Such clarity will prevent an undue and disproportionate burden for companies while also protecting consumers.

We also ask the regulator to explicitly differentiate between the obligations of first- and second-party publishers (i.e. those that syndicate content from a first-party publisher), acknowledging that parties have different functionalities and different abilities to moderate content due to their proximity to the reviewer. We also firmly believe that second-party publishers should be able to rely on contractual agreements and partner policies when complying with the fake reviews duties (specifically the requirement to take "reasonable and proportionate steps" to prevent fake reviews), rather than being obligated to carry out the same moderation operations as the publisher from which they license or syndicate review content. Since the first-party publishers providing the reviews to the second-party publisher will have already conducted their own risk assessments, requiring the second-party publisher hosting those same reviews to build out parallel moderation operations and carry out a further risk assessment would be disproportionate and duplicative, for no additional consumer benefit.

Lastly, we call for the regulator to recognise that while member services and platforms fulfil due diligence to champion consumer protection, they will need assurance that the approach they take will be acceptable under the new guidance. The regulator should allow platforms and services in scope sufficient time to review and make any necessary changes to their systems. This is especially important, as platforms will be undertaking compliance obligations associated with the Online Safety Act (ex. Illegal harms risk assessments) that are naturally parallel to some of the duties described in the CMA's guidance. Given the consultation's timeline and expected publication of final guidance, we ask that the CMA grants time for platforms and services to ensure they are in line with the guidance. During this time, we would welcome dialogue between the regulator and stakeholders to help them

understand obligations and best practices. This will foster confidence and cohesion across industry, while promoting the competitive and innovative environment that the CMA strives to protect.

Drip pricing

We understand the requirement for regulation of drip pricing across various sectors to foster standards of fair practice.

We ask the regulator to consider that in some circumstances, platforms must rely on third parties for accurate pricing information, and this may change at short notice for example, in markets which feature dynamic pricing. Platforms are often reliant on partners to provide pricing data, and this should be accounted for when assessing reasonable and proportionate compliance duties. More simply put, it is important that platforms are not penalised for the failure of third parties to supply timely and accurate data.

Furthermore, in the context of complex searches (comparing multiple flight options on a given route for example, which each consist of several offers which may differ on price), we ask the CMA to note that companies will often have spent considerable time and effort to design the results in a way that consumers can easily understand them to make informed decisions instead of being overwhelmed. In fact, the design of user interfaces is an important means of competition between services. The CMA should ensure the complexity of the underlying search is taken into account when evaluating compliance, but steer clear of platform design requirements that are too narrow and result in products that confuse consumers with information overload.

Again, as raised above, the platforms and services that are in scope will still require time to review existing policies and make any necessary changes once final guidance is published. We ask that the CMA factors in this time for platforms to adjust to compliance. We suggest that the regulator considers implementing a staggered approach, that also ensures communication can be facilitated with stakeholders on meeting obligations.