

Direct consumer enforcement rules

CMA201con

**Draft rules on the direct consumer enforcement
regime set out in the Digital Markets, Competition
and Consumers Act 2024**

31 July 2024



© Crown copyright 2024

You may reuse this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence.

To view this licence, visit www.nationalarchives.gov.uk/doc/open-government-licence/ or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gov.uk

1. Contents

Direct consumer enforcement rules	3
Interpretation.....	3
Application of the Rules	4
Representations	4
Substantiation of claims	5
Inspection of the file	5
Procedural complaints.....	5
Settlement.....	6
Notice of decision.....	7
Interconnected bodies corporate.....	7
Time limits and giving notice	9

Direct consumer enforcement rules

Interpretation

1.—(1) In these Rules—

“the Act” means the Digital Markets, Competition and Consumers Act 2024;

“CMA” means the Competition and Markets Authority;

“confidential information” means—

(a) commercial information whose disclosure the CMA thinks might significantly harm the legitimate business interests of the undertaking to which it relates,

(b) information relating to the private affairs of an individual whose disclosure the CMA thinks might significantly harm the individual’s interests, or

(c) information whose disclosure the CMA thinks is contrary to the public interest;

“internal document” means—

(a) a document produced by, or exchanged between, the CMA, a regulator or another public authority and which has not been produced for the purpose of public disclosure by the CMA, a regulator or another public authority,

(b) a document produced by, or exchanged between, the CMA and any person from time to time retained under a contract for services by the CMA, which has not been produced for the purpose of public disclosure, or

(c) a document which includes but is not limited to internal correspondence, internal advice, papers for and minutes of internal meetings, drafts of minutes with third parties, correspondence and notes of calls with other regulators, government departments and overseas authorities;

“other group member” means any other member or members of the group of interconnected bodies corporate of the respondent;

“public authority” includes—

(a) in the United Kingdom, a court or tribunal and any person exercising functions of a public nature, and

(b) in any country or territory outside the United Kingdom, a court or tribunal and any person or body which appears to the CMA to be exercising functions of a public nature;

“relevant person” means any of the following categories of person who has been authorised by the CMA to exercise any function under these Rules—

- (a) one or more members of the CMA Board,
- (b) one or more members of the CMA panel,
- (c) one or more members of staff of the CMA,
- (d) jointly by one or more of the persons mentioned in paragraph (a), (b) or (c);

“respondent” means a person who is subject to an investigation under Chapter 4 of Part 3 to the Act and to whom a provisional infringement notice or final infringement notice has been given, save where the notification is made under rule 9 or section 200(7) of the Act.

(2) Except where these Rules otherwise provide, expressions used in the Act which are also used in these Rules have the same meaning in these Rules as they have in Part 3 of the Act.

Application of the Rules

2.—These Rules apply when the CMA takes investigation or direct enforcement action under the Act in relation to any one or more relevant infringement.

Representations

3.—(1) Where, upon the expiry of the period mentioned in a provisional infringement notice pursuant to section 181(4)(d) of the Act, no written representations on the matters referred to in the notice given to the respondent have been made by the respondent, the CMA may proceed with the case in the absence of such written representations.

(2) Where the CMA has given a respondent a reasonable opportunity to make oral representations under section 181(4)(d) and 181(7) of the Act but no oral representations have been made, the CMA may proceed with the case in the absence of such representations.

(3) Where the respondent does make oral representations, the oral hearing must be chaired by a relevant person who, other than in acting as the chair under this rule or where applicable considering a procedural complaint under rule 6, has not been involved in the day to day running of or as decision maker overseeing the investigation in respect of which a provisional infringement notice has been given.

Substantiation of claims

4.—(1) Where the CMA requires the respondent under section 195 of the Act to provide evidence as to the accuracy of any factual claim made as part of a commercial practice by the respondent, it must set out the time period within which the respondent must provide such evidence.

(2) Where the respondent fails to provide evidence within the time period mentioned in rule 4(1), the CMA may determine that a factual claim of the respondent is inaccurate in accordance with section 195(3)(a) of the Act.

Inspection of the file

5.—(1) Where a provisional infringement notice is given, the CMA must give a respondent a reasonable opportunity to inspect the documents in the CMA's file that relate to the matters referred to in a provisional infringement notice given to that respondent, except that the CMA may withhold any document or information—

- (a) to the extent that it contains confidential information;
- (b) to the extent that it identifies an individual consumer;
- (c) to the extent it would be contrary to the public interest to disclose the document or information;
- (d) which is an internal document;
- (e) which is routine correspondence; or
- (g) which was provided by the respondent.

(2) The CMA may make the documents available pursuant to rule 5(1) in hard copy or by electronic means.

Procedural complaints

6.—(1) Complaints about the procedural decisions listed under rule 6(2) during the course of an investigation in relation to a suspected relevant infringement under the Act may be made to a relevant person specified by the CMA, who, other than reviewing a procedural complaint under this rule or acting under rule 3 if applicable, must not have been involved in the day to day running of the investigation or as decision maker overseeing the investigation. The relevant person under this rule is to consider the process followed in arriving at the decision complained about and the rationality of that decision where the complaint has not been determined or settled by the relevant person overseeing the investigation to the satisfaction of a complainant.

(2) For the purposes of rule 6(1), a procedural complaint must be made in writing and relate to the procedure followed with respect to one (or more) of the following:

- (a) decisions regarding the disclosure of information over which claims of confidentiality have been made;
- (b) the period provided by the CMA to respond to an information notice;
- (c) the period provided by the CMA to respond to a provisional infringement notice;
- (d) the period provided by the CMA to attend an oral hearing to make representations in relation to a provisional infringement notice; or
- (e) other significant procedural issues that may arise from procedural decisions during the course of an investigation.

(3) The relevant person under rule 6(1) must give notice to the person who made the complaint of the decision in respect of the complaint within 15 working days from the day on which the CMA receives the complaint.

(4) The relevant person under rule 6(1) may extend the period to give notice of the decision in respect of the complaint by no more than 10 working days if the relevant person considers that there are special reasons why the notice of the decision in respect of the complaint cannot be given to the complainant within the period under paragraph (3).

Settlement

7.—(1) The CMA may follow a settlement procedure in respect of an investigation under Chapter 4 of Part 3 to the Act where a party to that investigation—

- (a) admits that it has engaged in conduct which constitutes a relevant infringement;
- (b) agrees to an expedited procedure;
- (c) agrees to take any steps to stop or mitigate the relevant infringement as the CMA considers appropriate within a time period specified by the CMA;
- (d) agrees to comply with the final infringement notice; and
- (e) agrees not to appeal any matter set out in the final infringement notice.

(2) Where the CMA follows the settlement procedure, rule 5 does not apply.

(3) Where a single relevant person takes the decision to follow a settlement procedure pursuant to paragraph (1) that relevant person may also decide to issue

one or more of a provisional infringement notice, final infringement notice and online interface notice.

(4) Where the CMA decides to follow a settlement procedure pursuant to paragraph (1), the CMA may elect to impose on that respondent and any interconnected body corporate either or both of a penalty and a direction under section 182(4) as applicable.

(5) Where the CMA follows a settlement procedure and elects to impose a penalty it may agree to a discount which will apply provided that the conditions set out in rule 7(1)(a) to 7(1)(e) and any other conditions that the CMA specifies in writing have been met, and where specified by the CMA continue to be complied with.

Notice of decision

8.— Where the CMA has issued a final infringement notice, it may publish that notice on the CMA's website.

Interconnected bodies corporate

9.—(1) Where the CMA wishes to include a provision for any monetary penalty or directions imposed by the final infringement notice on the respondent also to be binding upon any other group member as if each of them were a respondent pursuant to section 200(3) of the Act, the CMA will first take steps that it considers reasonable and proportionate to:

- (a) notify the other group member that it intends to do so; and
- (b) invite written representations on whether the other group member is interconnected with the respondent and whether it is just, reasonable and proportionate for the penalty or directions as appropriate to be imposed on it.

(2) When inviting representations under paragraph (1)(b):

- (a) The CMA may set a time period within which representations under paragraph (1)(b) must be received, and require representations to be consolidated or otherwise given by one person on behalf of others.
- (b) The CMA must consider the representations received in accordance with rule 9(1)(b) before making a final decision on whether or not to make a monetary penalty or directions binding on the other group member in the final infringement notice, save where rule 9(2)(c) below applies.
- (c) Where no representations are received within the time period specified in rule 9(2)(a), the CMA may proceed with issuing a notice under section 200 of the Act to bind the other group member in the final infringement notice.

(3) This rule does not make interconnected bodies corporate a respondent of the provisional infringement notice for the purposes of the Act or give interconnected bodies corporate the right to make representations in relation to other matters, including the infringement, the amount of the penalty and any other requirements in the notice over and above those submitted by the respondent, and the CMA may disregard any such representations.

(4) For the purposes of this rule, when giving the provisional infringement notice to the respondent, the CMA may request that the respondent:

(a) identify all of the interconnected bodies corporate in its group in accordance with section 200 of the Act;

(b) provide the CMA with contact details for service for each member of the group of interconnected bodies of which the respondent is a member in line with section 332 of the Act;

(c) inform the CMA of any change in relation to the information provided pursuant to paragraphs (4)(a) and (b) above; and

(d) make arrangements for any interconnected body corporate to be notified that they may be bound by a final notice and invite representations from them as set out in this rule.

(5) For the purposes of this rule, the final infringement notice may include, in addition to any provision included pursuant to section 200 of the Act, provision for the respondent to inform the CMA of any change in relation to information provided under paragraphs (4)(a) and 4(b) above.

(6) The CMA will have discharged its obligations under paragraph (1) where (as applicable):

(a) any parent company of the relevant interconnected body corporate is notified;

(b) members of the group of interconnected bodies corporate have been notified relying on information provided by the respondent as being complete and accurate; or

(c) any respondent has agreed to notify and seek representations from any interconnected body corporate.

(7) The obligation under paragraph (1) does not extend to notifying members who become part of the group of interconnected bodies corporate after the date the CMA issues the provisional infringement notice.

(8) Notwithstanding paragraph (1), where section 200(3) of the Act applies, the CMA may at any time where sections 200(2)(b) or (c) of the Act apply, serve notice under section 200(7) of the Act on any new member of the group of interconnected bodies corporate to which the respondent is also a member.

Time limits and giving notice

10.—(1) Where the CMA has taken all reasonable steps to give notice to a person as required under section 181, 182, 184 and 200 of the Act but does not consider that the notice has been received, the CMA may publicise the matter in accordance with paragraph (2) in order to give notice to that person.

(2) The CMA may publicise the matter by publishing a summary of the notice on the CMA's website.

(3) Except where paragraph (1) applies, where the Rules allow or require notice to be given to a person, such notice is to be treated as having been given on the date on which that person receives it.

(4) Where paragraph (1) applies, the notice is to be treated as having been given on the date of its publication in accordance with paragraph (2).

(5) Any notice given under the Rules must be in writing.

(6) Where the time prescribed by the Rules for performing an action expires on a non-working day, the action is in time if done at or before 5.30 p.m. on the following working day.

(7) Where an action required by the Rules is performed on a non-working day, or after 5.30 p.m. on a working day, the action is deemed to be completed on the following working day.