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Consumer Law Powers under the DMCCA: CMA and external counsel perspectives

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Date: Tuesday 11 November 2025

Venue: Lewis Silkin LLP, 255 Blackfriars Road, London SE1 9AX

Introductions

The session opened with an overview of the key topic of discussion, the new consumer protection regime under the Digital Markets, Competition and Consumer Act 2024 (“**DMCCA**”), which entered into force on 6 April 2025. The discussion highlighted the key development under this new regime, the Competition and Markets Authority (“**CMA**”) is now able to directly enforce its powers and impose penalties without going through the courts, unlike the older regime which required the courts’ intervention.

The CMA’s new consumer protection powers

The session explored the shift introduced by the DMCCA. For the first time, the CMA has “dialled up” the consequences of consumer law breaches. Historically, there had been an imbalance between competition and consumer law. The new regime brings these frameworks into closer alignment.

Key points included:

- Breaches of consumer law can now result in fines of up to 10% of global turnover.
- Failure to comply with information notices may also attract penalties directly imposed by the CMA, strengthening the CMA’s ability to act with pace.

It was noted that businesses acting responsibly should not be disadvantaged against those adopting misleading practices, such as unfair pricing strategies or undue purchase pressure. The CMA’s work is guided by three themes:

1. Explaining the “rules of the road”;
2. Helping businesses “get it right”;
3. Setting out standard consequences when things go wrong.

The discussion highlighted the CMA’s aim to support compliance through guidance, and to make the guidance less lengthy and more accessible.

Why consumer protection matters for effective competition

From an economics perspective, consumer protection plays a key role in addressing market failures.

- Consumers often do not make perfectly calculated decisions, and rivalry may exploit consumer behavioural biases, producing outcomes misaligned with consumer needs.
- Consumer law protection helps mitigate these problems, by ensuring that information is presented in a way that supports consumers in making informed choices and matching their needs.

Advertising, marketing and compliance challenges under the DMCCA

The introduction of DMCCA penalties requires businesses to reassess claims through a new, more stringent lens. Many businesses are comfortable with regulation undertaken by the Advertising Standards Authority (“ASA”) and the previous consumer law regime. The new consumer law regime has therefore raised a number of issues from businesses’ perspective:

- Businesses are concerned that they can no longer rely on the ability to challenge enforcement in the courts before being issued a fine. The new regime therefore introduces greater uncertainty and the prospect of substantial penalties being imposed swiftly.
- There is a difficult balance to strike in setting rules that apply to diverse sectors. Some businesses are unsettled by the broad scope of the new regime and favour a narrower approach, whilst others are calling for more detailed guidance.
- New CMA guidance on pricing claims and discount pricing is expected imminently and is already prompting concern among UK and US businesses, who may need to rapidly adjust their practices as soon as the guidance is published.

The Emma Sleep case and reference pricing

The discussion covered the CMA’s investigation into Emma Sleep. It was noted that the online mattress sector had long featured misleading discounting practices, where almost all products were sold at a discount and virtually none at the stated “full” price.

- The CMA sought undertakings that, for every sale at the higher reference price, not more than two sales could be made at the discounted price.
- This 1:2 ratio goes beyond simply requiring that a “significant number” be sold at the higher price and represents a far more stringent approach than has been seen internationally.

Practical challenges were noted, it will be difficult for retail businesses to monitor compliance with this ratio, as they often do not track this kind of data. Greater clarity is needed and will hopefully emerge from the upcoming trial scheduled for June 2026.

From an economic perspective, whilst reference pricing affects consumer behaviour, there is a counterfactual world where even without a reference price, many consumers might still have purchased the mattress, as reference pricing is widespread across the mattress sector. Imposing such strict restrictions may therefore fail to reflect the complex ways in which consumers interpret price signals and base their decisions.

It was noted that the authorities do not seek to set prices, but when a reference price is used it must represent a genuine saving. Sector-wide practices do not justify misleading conduct; an “unhappy equilibrium” should not be accepted.

Practical challenges across sectors

The panel highlighted evolving consumer expectations and sector-specific patterns, such as the highly seasonal nature of products like ski helmets, create compliance challenges. In sectors where most

businesses discount at the same time, firms may be reluctant to comply with a 1:2 ratio if competitors are ignoring it, for fear of losing out commercially.

It was noted that a principles-based mechanism, such as the CMA's, can create a chilling effect, with businesses becoming overly cautious in order to avoid penalties. This was compared to experiences with greenwashing rules, where some companies now avoid making environmental claims due to fear of enforcement.

The panel observed that guidance must be grounded in specific market context, taking account market practices, evolving consumer preferences, and whether the conduct in question would genuinely influence consumer decision-making.

The discussion concluded by emphasizing the CMA's intention to supplement the guidance that was issued in April when the regime came into force. It was noted that the CMA will prioritise egregious conduct, highlighting that although its powers have strengthened, its approach remains proportionate.