

SMMT response to consultation on Direct consumer enforcement guidance and rules

11 September 2024

Introduction

1. The Society of Motor Manufacturers and Traders (SMMT) is one of the largest and most influential trade associations, representing the automotive industry in the UK.
2. The automotive industry is a vital part of the UK economy, integral to growth, the delivery of net zero and the UK as a global trade hub. It contributes £93 billion turnover and £22 billion value added to the UK economy, and invests around £4 billion each year in R&D. With 198,000 people employed directly in manufacturing and some 813,000 across the wider automotive industry. Many of these automotive manufacturing jobs are outside London and the South-East, with wages that are around 13% higher than the UK average. The sector accounts for 12% of total UK exports of goods with more than 140 countries importing UK produced vehicles, generating £115 billion of trade in total automotive imports and exports.
3. The UK manufactures almost every type of vehicle, from cars, to vans, taxis, trucks, buses and coaches, as well as specialist and off-highway vehicles, supported by more than 2,500 component providers and some of the world's most skilled engineers. In addition, the sector has vibrant aftermarket and remanufacturing industries. The automotive industry also supports jobs in other key sectors – including advertising, chemicals, finance, logistics and steel.
4. SMMT wishes to remain engaged with the Competition Markets Authority (CMA) regarding considerations on all matters pertaining to CMA's exercise of its consumer regulatory powers.

Executive Summary

5. SMMT appreciates the opportunity to respond to the CMA consultation on its draft guidance on Direct Consumer Enforcement (CMA200CON). Given the unique characteristics and challenges of the automotive sector— ranging from complex supply chains to significant cross-border operations — there are several points in the draft guidance on which we offer feedback and suggestions aimed at ensuring that the CMA's approach is both effective and proportionate for the automotive sector.
6. The draft guidance highlights the use of unannounced visits, including dawn raids, as an investigative tool in the CMA's wider arsenal of tools. It would be helpful if the CMA could expand on the specific circumstances under which dawn raids would be proportionate, as it is currently placed within the context of the Senior Responsible Officer's judgment. It would be further helpful to set out a more defined framework or suggested escalation examples or a risk-based approach where the potential harm of such an intervention is weighed against the need for immediate action and consumer protection.
7. The methodology for determining fines based on turnover is of particular concern to the SMMT's members, where annual revenues can fluctuate significantly due to factors such as global supply chain issues, exchange rates, and market demand. In addition, the proposed 30% of UK turnover as a starting point for fines appears substantial. We would kindly ask the CMA to reconsider these two points and provide further explanation as to its rationale.
8. The decision-making process for calculating fines, including the consideration of aggravating and mitigating factors, is crucial for ensuring the fairness and proportionality of any fine. The guidance may benefit from more detailed examples, illustrating how such factors might influence the final penalty. This clarity would assist companies in understanding the potential financial implications of non-compliance and encourage proactive compliance efforts.
9. The automotive industry is inherently global, with many UK operations being subsidiaries of foreign parent companies. The guidance on comity and extra-territorial enforcement is therefore particularly relevant. The recent Court of Appeal decision in *CMA v Rex on the application of Volkswagen Aktiengesellschaft and Bayerische Motoren Werke AG* underscores the complexities of enforcing UK competition law in a global context, and sets out clear guidelines for what the UK courts consider best

practice. We would ask that the CMA's approach to information requests and fines that have extra-territorial implications is clearly outlined to avoid unnecessary conflicts with foreign jurisdictions. We recommend that the CMA engage further with industry stakeholders to develop guidelines that reflect the realities of multinational operations, ensuring that enforcement actions are consistent, predictable, and respectful of international comity principles.

10. The Digital Markets, Competition and Consumers Act 2024 ("DMCC 2024") has significantly expanded the scope of investigatory powers and enforcement across a range of regulators, including Trading Standards. This legislative framework empowers multiple bodies to take action against non-compliance, which could lead to variations in enforcement approaches across different regulators and enforcement protocols. The CMA200CON guidance will likely serve as a benchmark for other regulators in exercising their powers. As such, it would be important for the CMA to provide a clear and consistent framework that can be adopted or adapted by other regulatory bodies.
11. The response time for businesses to address a provisional infringement notice issued by the CMA has been shortened to 20-30 working days (or 4-6 weeks), in contrast to the 12-week period allowed for competition infringement notices. We understand this is related to the duty of expedition required under the DMCC 2024, however we would request that the CMA provide further explanation for its decision to reduce the response period for consumer enforcement, given that consumer issues may also involve similarly complex access to file and response procedures or raise issues, like transactional decisions, which may require behavioural studies to assess consumer detriment, which might not be feasible within the suggested 4-6 week period.
12. The automotive sector in particular faces a number of challenges, including around innovation. For example, issues related to emerging technologies such as automated driving systems and connected vehicles may require a nuanced enforcement strategy. We would ask the CMA to consider a flexible approach accounting for the circumstances of any alleged infringement or propose a pragmatic framework that can take account of novel issues.

Conclusion

13. Overall, the SMMT supports the CMA's new powers and enforcement regime, allowing consumer protection issues to be addressed swiftly and removing potentially additional costs and detriment from court applications under the original CMA58 guidance.
14. However, given the broad range of sectors to which it applies and the unique features of the automotive sector, we believe that certain aspects of the draft guidance may require further refinement, to ensure enforcement actions are both effective and equitable across those different sectors. We hope that our feedback will contribute to a more balanced approach. SMMT is happy to engage further with CMA on any matters raised here.

Contact

