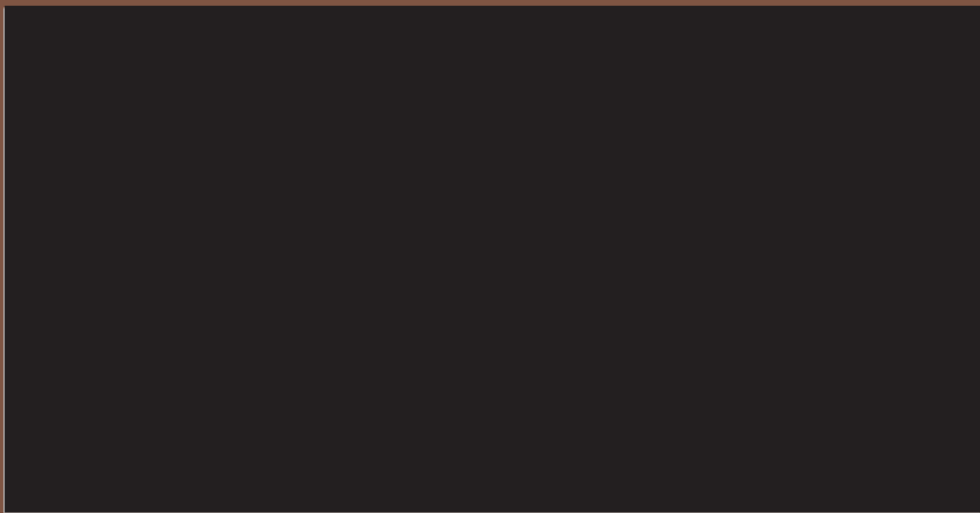




Response to the Competition and Markets Authority's consultation on Direct consumer enforcement.

30 August 2024





About Yoti

[Yoti](#) is a digital identity company that makes it safer for people to prove who they are. Founded in April 2014, we started by creating a secure Digital ID app which gives people a safer and instant way to prove their identity, with no need to show identity documents or share an excessive amount of personal data. Yoti now provides verification solutions across the globe, spanning identity verification, age verification, age estimation, eSigning and authentication. We're a team of over 400 people, working together to shape the future of digital identity.

We're committed to making the digital world safer for everyone. Our seven ethical principles guide us in everything we do and we're held accountable by our independent Guardian Council, whose minutes we publish. With an award-winning social purpose strategy, we're always looking for new ways to explore what (digital) identity means globally. The journey isn't one we're making alone, but with the help of policy advisers, think tanks, researchers, humanitarian bodies and everyday people.

What we are doing and why:

- Transforming the way individuals can prove their age and identity
- Increasing security and privacy of personal data
- Helping to create age-appropriate experiences and safer communities online
- Creating the most reliable and comprehensive identity verification solutions
- Shaking up the way we sign documents

Technology as a force for good - Yoti was founded on seven business principles which guide our actions. Yoti is also a founding UK B Corp, meaning we aim to balance profit with purpose.

Security credentials - We commission regular external audits of our business and have been certified to meet some of the world's most stringent security standards, such as ISO 27001 and SOC2 Type II. We are also certified by the UK Government under the UKDIATF (UK Digital Identity & Attributes Trust Framework)

A transparent, open and honest approach - Yoti publishes regular white papers to build trust and understanding of our technology.

Responses to Consultation Questions

- Q1. Do you have any comments on the proposed process for submitting written representations on provisional infringement and/or administrative enforcement notices?

We are supportive of the option of providing written representations. We encourage the CMA to be flexible in considering what deadlines to choose, by taking into account the complexity of the request and the size and resources of the company in question.

The CMA's proposed deadlines for submitting written representations, typically set between 20 and 30 working days after issuing a Provisional Infringement Notice (PIN), are concerning due to the potential for shorter deadlines in "*appropriate circumstances*," which could cause uncertainty and resource constraints for member companies. We recommend a minimum standard of 30 working days, with shorter deadlines reserved for truly urgent cases with clear evidence of imminent consumer harm, alongside clear guidance on what constitutes "*appropriate circumstances*" to ensure predictability. Regarding extension requests, we suggest greater clarity on what qualifies as "*compelling reasons*" to help companies assess the likelihood of approval. Finally, while the CMA's discretion over confidentiality claims is noted, clearer criteria and examples of valid claims would be helpful, along with more than ten working days to prepare non-confidential versions in complex cases requiring substantial redaction.

- Q2. Do you have any comments on the proposed process for conducting oral hearings on provisional infringement and/or administrative enforcement notices?

This is appreciated, and we reiterate our call for flexibility. Greater clarity on deadlines for agreeing agendas is needed, along with, as previously mentioned, some allowance for flexibility and tolerance.

We would recommend that the CMA allow a reasonable interval between the submission of written representations and the oral hearing to ensure adequate preparation time and enable the company to fully digest feedback and prepare focused arguments. Additionally, the restriction on raising new points not included in written submissions could be overly limiting, especially if new information emerges later. We suggest a more flexible approach, allowing parties to introduce relevant new points at the oral hearing if communicated in advance. This could include allowing multiple oral hearings in complex cases and reconsidering the exclusion of third-party attendants (such as professional advisors). Furthermore, while full responses during the hearing are expected, we support the option for written responses afterwards, with a reasonable timeframe to ensure accuracy. Even if all questions are addressed during the hearing, a brief follow-up submission should be permitted, particularly if new issues arise during discussions, to ensure the company's position is fully understood.

- Q3.** Do you have any comments on the factors that the CMA proposes to consider when deciding whether to accept, vary or release undertakings?

There could be duty for the CMA to explain why it may have made a decision not to vary the undertaking, or release the undertaking.

Developing proposed undertakings can demand significant resources from companies, so it would be highly beneficial if the CMA were open to preliminary discussions to help companies determine whether an undertaking is a suitable resolution strategy and to structure proposals more likely to be accepted. Publishing examples of past cases where undertakings were accepted or rejected would also be valuable. Likewise, for variation and release requests, allowing for preliminary discussions before formal submissions would be helpful in gauging the likelihood of success and avoiding unnecessary resource commitments.

We welcome the CMA's recognition that undertakings may need to be varied or released due to changes in circumstances or business operations. This flexibility is particularly important in the technology sector, where practices and consumer expectations evolve rapidly. We urge the CMA to consider the pace of technological change when assessing whether an undertaking remains necessary or effective. For example, a "*material change in circumstances*" should encompass technological advancements or market shifts that render previous commitments obsolete or less relevant.

- Q4. Do you have any comments on the factors the CMA proposes to consider, the proposed minimum conditions and process for engaging in settlement discussions and accepting a settlement?

None

- Q5. Do you have any comments on the factors that the CMA proposes to consider when determining whether a reasonable excuse for certain breaches exists?

Alongside "*significant and genuinely unforeseeable*" events as a basis for a reasonable excuse, the CMA should also consider significant operational disruptions that, while not entirely unforeseeable, were unavoidable despite reasonable efforts to comply. Examples include complex cybersecurity incidents or major disruptions from third-party service providers. Evaluations of whether IT failures could "*reasonably have been foreseen or avoided*" should factor in the complexity of modern systems, interdependencies that could lead to compliance issues, and prompt rectification efforts.

While staff errors are acknowledged as potential reasonable excuses, the requirement to report such errors "*promptly before the CMA relies on the information*" may be impractical in large organisations with multiple layers of review. We suggest extending the timeframe for reporting errors, particularly

when identified through internal reviews or audits. This would encourage proactive management and correction of compliance issues without automatic penalties.

Although the unplanned absence of key personnel is unlikely to be a reasonable excuse for larger companies, the CMA should be more flexible when dealing with SME technology companies. In smaller firms, specialised compliance tasks may rely on specific individuals, and adequate human resources for cross-training may be limited. The CMA should allow a reasonable period to correct non-compliance in such cases, provided the company has made reasonable efforts to meet its obligations during the absence.

- Q6. Do you have any comments on the objectives and considerations that the CMA proposes to apply in imposing monetary penalties for substantive and/or administrative breaches?

None

- Q7. Do you have any comments on the step-by-step approach and/or on any particular steps that the CMA proposes to apply in calculating monetary penalties for substantive breaches?

We welcome the CMA's outlined penalty calculation steps but seek clearer guidance on defining '*major*', '*significant*', or '*moderate*' harms to ensure transparency and fairness..

- Q8. Do you have any comments on the factors that the CMA proposes to consider when deciding whether to impose a fixed or daily penalty for administrative breaches?

None

- Q9.** Do you have any comments on the step-by-step approach and/or on any particular steps that the CMA proposes to apply in calculating monetary penalties for administrative breaches?

We would welcome more clarity as to how the CMA will assess a party's world-wide turnover.

- Q10.** Do you have any comments on the factors that the CMA proposes to consider when deciding whether to start proceedings for recovery of unpaid monetary penalties?

None

- Q11.** Do you have any comments on the proposed internal CMA decision-making arrangements for direct consumer enforcement cases?

In its document, the CMA suggests that it will first approach parties in potential breach informally, to enable them to engage in settlement negotiations. Appendix C does not seem to reflect this. We would encourage the CMA to always attempt to approach firms informally, and only naming the party where this informal procedure has not been conclusive.

- Q12.** Do you have any comments on the proposed scope and process for referring and deciding procedural complaints?

We recommend that if there is a procedural complaint, a different Senior Responsible Officer (SRO) from the one designated by the CMA to lead the case should be assigned to assess the validity and outcome of the complaint. This measure is intended to uphold impartiality in decision-making.

We would highlight that the five-day deadline for referring a complaint to the PCA could be very restrictive, especially for companies with limited resources or complex issues. We recommend extending this period to a reasonable amount of time to allow sufficient time for thorough preparation, with flexibility for extensions in complex cases.

Q13. Do you have any other comments on topics not covered by the specific questions above?

The below is some of our historic feedback. It has often been provided in responses to consultations by the Digital Regulation Cooperation Forum (DRCF), of which the CMA is a member, but never to the CMA directly.

Policy interactions and new technologies:

We continue to emphasise the significance of recent advancements in digital identity and AI age estimation technologies, which have the potential to enhance public trust in technology and protect vulnerable individuals online. The UK Digital Identity & Attributes Trust Framework (UDKIATF), which began accrediting digital identity service providers in 2021, including Yoti, the Post Office, and Lloyds, marks a significant step forward. We previously suggested that the Digital Regulation Cooperation Forum (DRCF) and its members consider how they can harness the potential of the trust framework to deliver the aims of their annual work plans, given its relevance across multiple regulatory domains.

Participation in intergovernmental and inter-regulator working groups:

We continue to encourage the DRCF and its members to engage in existing international collaborative initiatives such as Agile Nations, the Global Online Safety Regulators Network (GOSRN), and other international fora which are relevant and open to the CMA. Participation in these fora can facilitate the development of supervisory technologies and enforcement mechanisms for the global digital industry. In 2025, there will also be an opportunity for the Government to consider additional regulatory alignment and cooperation with Europe, which could reduce costs for cross-border trade and increase market access. Such collaboration will be crucial as digital markets regulation evolves worldwide.

Membership of the DRCF:

To capture a broader range of expertise, we have suggested expanding the DRCF to include additional member regulators and bodies, such as the Advertising Standards Authority, the Centre for Data Ethics & Innovation, the Digital Markets Unit, and the Gambling Commission. Government departments like the Home Office, Driver and Vehicle Licensing Agency, Government Digital Service, DCMS, and the UK's delegation to the Agile Nations group could also be included as observers. This approach would ensure a diverse and comprehensive perspective without compromising the DRCF's independence. We have also suggested enhanced collaboration with organisations like the Department for Business & Trade (DBT) could support the creation of international sandbox partnerships and ensure the UK's regulatory alignment with key trading partners.

Joined-up approach between regulators:

We have encouraged the CMA and the DRCF to prioritise initiatives that can deter specific harms and protect vulnerable people online. We have advocated for a joint plan for consumer education and experiential research in collaboration with industry representatives. This would align with the

DRCF's aim of prioritising work and ensure meaningful and impactful outcomes. Navigating multiple departments is challenging for SMEs and scale-ups. A coordinated regulatory approach and simplified consultation processes would enhance engagement and regulatory clarity. We also recommend developing more competent audit bodies and a benchmarking and review capability within the UK.

Engagement with civil society stakeholder groups:

Transparency and accountability are crucial. The CMA and DRCF should ensure regular engagement with civil society groups and business representatives, publishing regular reports and meeting minutes to build public confidence and participation. Coordination of research and development of joint consumer education campaigns, similar to Ofcom's Making Sense of Media (MSOM) duties, would further enhance stakeholder engagement.

Digital Markets Unit and innovation:

Yoti welcomed the creation of the Digital Markets Unit (DMU). Innovation-focused regulation is essential for promoting a vibrant digital technology sector. We have suggested that the DMU should adopt a model of pre-legislative engagement with the private sector and NGOs, ensuring open communication and public debate to foster trust. We have also suggested that the DMU's supplementary powers should focus on promoting innovation and protecting consumer interests. We recommend a duty to consult and cooperate with other regulators, including Ofcom, the Information Commissioner's Office, and the Financial Conduct Authority, to address broader policy issues effectively.



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