

The Coalition for Trusted Reviews' response to the CMA Unfair Commercial Practices consultation

Introduction

The Coalition for Trusted Reviews (CfTR) welcomes the opportunity to respond to the CMA's consultation responding to its *Draft guidance on the protection from unfair trading provisions in the Digital Markets, Competition and Consumers Act 2024*.

Consumer reviews play a role in empowering consumers to make informed decisions by shaping consumer confidence and ensuring transparency in the marketplace. Our business models depend on delivering accurate, trustworthy information that enables consumers to make choices that align with their best interests.

About the Coalition for Trusted Reviews

We are a global cross-industry collaboration promoting trust in reviews and our founding members are Amazon, Booking.com, Expedia Group, Glassdoor, TripAdvisor, and Trustpilot. We are committed to upholding the highest standards of integrity in consumer reviews, and through collaborative initiatives, we share industry best practices for maintaining the authenticity of reviews, thereby instilling confidence in consumers worldwide. Our members also appreciate the significant risks posed by fake reviews and have already made substantial progress in addressing these risks.

Overall position on draft guidance

Our members welcome the publication of the draft guidance on *Unfair Commercial Practices* and have been anticipating this significant step for quite some time. This was also noted at our annual conference in October 2024 where a representative from the CMA made a valuable contribution to a panel on legislation and enforcement in UK digital markets.

We have been following the development of the DMCC Act's provisions on fake reviews since its inception, are supportive of measures to address the issue of fake reviews and see these statutory requirements as taking a front-footed approach. Our continued belief is that the primary focus of regulators should be to target those who commission, solicit, buy or sell fake review content. These are the source of the problem and thus the true 'bad actors' in relation to reviews -- their behaviours harm consumers around the world.

However, the Coalition also agrees that platforms have a role to play in creating an environment conducive to trusted review content, especially by taking active steps to identify and remove fake reviews. The Coalition for Trusted Reviews has come together for a similar purpose, to collaborate on promoting trusted reviews, to share knowledge and best practices, and work with the broader online ecosystem to tackle fake reviews holistically.

We are pleased that the CMA's draft guidance (specifically sections B.26 and B.27) begins acknowledging the range of different intermediaries that make available or display reviews, their varied business and operating models and that, therefore, there is no 'one-size-fits-all' approach.

Accordingly, platforms expect to be able to interpret the guidance flexibly, tailoring their approach to reasonable and proportionate steps in line with the risk that they identify on their own services. The Coalition also upholds similar aligning principles, which is reflected in our recent work promoting a set of best practices (enclosed in the [appendix](#)). We are actively seeking to grow the Coalition and encourage more businesses to commit to these standards.

Our members would welcome further engagement with the regulator to continue sharing best practices to mitigate the detrimental impacts and risks of fake reviews.

Key clarifications and asks

We appreciate the CMA's in-depth attention to definitions, illustrative examples, and use cases throughout the guidance to make it more comprehensive, and easier for services to follow. While we engage with these detailed sections later in the response, we have two significant concerns regarding the proposals in the draft guidance:

1. Commencement timeline and a reasonable implementation period: While the official commencement date for the CMA's enforcement powers is a matter for Government consideration, it is widely expected that its powers with respect to fake reviews, will begin from 1st April 2025.

Given the finalised guidance is likely to be published shortly, before that date we urge the CMA to acknowledge, either in the guidance or in an accompanying statement, that platforms and websites which host reviews will need time to update their systems and processes in line with the new requirements. This would include a review of existing processes; ensuring that any gaps are identified; documenting existing policies, practices and processes; scoping and building any new features necessary; making changes to the display of reviews where appropriate; and potentially adding / negotiating additional contractual protections with third parties. It could reasonably be expected that such changes will involve a range of different internal teams and could therefore take upwards of 12 months to be fully operational.

This will also ensure that there is sufficient time for there to be clear communication to consumers and businesses regarding the application of this element of the Act. Given the importance of reviews to consumers and businesses, it is critical that trust in the reviews is not undermined due to confusion in relation to how these requirements apply, both to platforms gathering reviews and third parties displaying reviews. A reasonable period of time, from the commencement date (i.e. potentially upwards of 12 months), will be required to communicate the rules and guidance. Platforms would be grateful for the CMA's support to work constructively with firms who may need advice on how to ensure compliance.

2. The requirement to conduct risk assessments: While the draft guidance does not specify how a risk assessment needs to be conducted and recorded; it is worth noting that all regulated user-to-user services are already currently undertaking 'risk assessments' in compliance with Ofcom's implementation of the Online Safety Act (OSA). We believe further clarity on the CMA's expectations of the risk assessment would be beneficial, especially since there is

potential for significant overlaps between the two risk assessment requirements. A statement by the CMA in relation to fake reviews to provide clarity on how to avoid duplications with the OSA would be helpful. It would also be a suitable starting point for platforms to subsequently integrate any requirements into their existing processes while upholding the flexible and proportionate approach employed by the CMA.

Additionally, as evidenced by the work of the Coalition for Trusted Reviews and the best practices we have developed, there are many platforms that are already aware of the risks posed by fake reviews and are taking proactive steps to protect users. The draft guidance is helpful in progressing this work further, but it would be more proportionate if the guidance were to note that the CMA acknowledges that some platforms may already have active measures to identify and remove banned reviews¹. Therefore, the requirement to conduct separate, formal risk assessments from first principles may not apply in all cases.

Responses to specific guidance proposals

Risk assessments (B.34-B.39)

As mentioned in our overall position above, the draft guidance's current phrasing of the requirement to conduct "regular and comprehensive risk assessments" is unclear. While a level of flexibility is desirable to allow platforms to take an approach suitable to their own circumstances, the guidance does not provide any detail on the process, format, publication, timing or frequency of a risk assessment. For platforms and websites hosting reviews who are not yet taking steps to mitigate any risks they face, the risk assessment is likely to be a useful tool. However, for this assessment to be highly effective, the processes involved in undertaking these assessments need to be detailed to a certain degree, while accommodating the flexible approach implicit in this compliance regime.

We would suggest that there is an opportunity to align the DMCC Act's requirements with the risk assessment obligations conducted as part of the Online Safety Act requirements (which must assess the risk that fraudulent user to user content, which could in principle include banned reviews that appear on a given service). Specifically, we suggest that these could be considered as fulfilling the obligation under this guidance to strike a balance between ensuring that obligations are met, without creating unnecessary overlap or administrative burdens. We would encourage the CMA to engage with Ofcom on this point, through bodies like the Digital Regulation Cooperation Forum (DCRF) or any other suitable means.

Further, steps the Coalition has taken to promote best practice by platforms to tackle the problem of fake reviews, and generate awareness surrounding the risks associated with fake reviews, demonstrate that some platforms are already undertaking significant work programmes in this area. For these platforms (which include our Coalition members), a risk assessment from first principles seems to be unnecessary, duplicative, and takes resources away from the existing work of these platforms to identify and remove fake reviews. A proportionate approach might entail that those with processes already in place conduct a lighter touch assessment to ensure that such measures are sufficient.

¹ We adopt the same shorthand used in the CMA's draft guidance: "banned reviews" means fake reviews and concealed incentivised fake reviews.

However, we also acknowledge that even those services with developed processes in place should regularly review and monitor the measures they take to ensure they are sufficient.

This acknowledgement would reflect the CMA's acknowledgement in B.27 that there is no 'one-size-fits-all' approach and provide greater clarity on the regulator's expectations concerning risk assessments. As a result, services would be able to better understand and undertake their compliance duties to tackle fake reviews.

Detection and sanction measures (B.41 and B.47)

We appreciate the CMA's examples of detection and sanction measures as they provide a helpful structure of how platforms should think about the ways in which they can detect banned reviews. As part of our cross-industry coalition, this is an area that the Coalition has been doing work on and has produced a set of best practices. We are pleased that, similar to the CMA guidance, these best practices highlight having clear policies, detection measures, escalation processes, as well as reasonable and appropriate sanctions. These best practices have been developed so that all types of platforms hosting reviews and ratings can sign up to them and are quite broad in how they can be interpreted (a point that is also acknowledged by the CMA guidance). To ensure flexibility and the relevance of the guidance, it would be helpful for the CMA to reaffirm in point B.41 (regarding appropriate detection measures) that platforms should deploy measures like these in a risk-weighted way. The same should also be added in section B.47, where the guidance lists appropriate measures for sanctioning those who submit, commission, produce or facilitate banned reviews.

In line with our comments on B.26, we would like to note that one common source of reviews and review content is other third-party websites. To cover such cases, we suggest that the guidance in B.41 (a) should state that in instances where reviews are gathered from third party websites, one such appropriate measure is having clear agreements in place with the providers of these reviews to ensure this content is moderated and/or verified. This will give websites that host third party reviews the ability to rely on robust agreements with third party providers, alongside platform-wide mechanisms whereby suspicious reviews can be flagged. Given that the content has come from another platform, further detection tools for the service sourcing reviews would be challenging to institute.

Definitions and conceptual clarifications

Fake reviews (B.9)

The Coalition for Trusted Reviews has developed its own definition of a 'fake review' which aligns well with the definition that is contained within the CMA's guidance (B.9). The Coalition defines fake reviews in the following manner:

"Reviews and ratings that are not based on a genuine experience, or otherwise deliberately mislead, with the purpose of manipulating others."

This definition highlights the intention factor implicit in a fake review. It is worth noting that in our members' experience, sometimes a business may seek to challenge a review as "fake" because they have a different record of the details of the experience that the customer is setting out, or if they do not

agree with the customer's recollection or characterisation of the event. In these cases, we do not think that the contested review should be removed, instead a more transparent approach would be to ensure that the business concerned has a public right of reply so they can give their own version of events. To protect genuine reviews, we suggest the CMA's rationale behind this definition is clarified slightly to mention the intention of the reviewer, through illustrative examples.

This would protect reviews where the facts of the experience are contested by the business, but the review nonetheless reflects the genuine experience of the customer as they see it. We acknowledge that the CMA's draft guidance defines fake reviews per the DMCC Act (Schedule 20, paragraph 13(5)(b)), and so we would resultantly welcome illustrative examples capturing this point.

Concealed incentivised reviews (B.10)

Our members have varied approaches to incentivised reviews, reflecting the different business models and industries in which platforms operate. Some firms do not allow any incentivisation at all. Others, particularly some marketplaces, occasionally encourage customers to leave a review (positive or negative) by offering them incentives at a platform level (for example, loyalty points). However, they would not allow individual businesses selling through the platform to incentivise reviews. Succinctly, our members agree that any review which has been incentivised should be labelled as such, i.e. we do not allow undisclosed incentivised reviews.

Bearing this in mind, the Coalition is concerned that the illustrative examples provided for 'incentivised reviews' in B.10 are too broad, and may be interpreted to capture a large volume of reviews which can be genuine. We are particularly concerned about sub sections (h) and (i) in relation to the reviewer having a financial interest or a commercial link with the trader being reviewed. We believe this definition could pose problems, for instance, if a customer reviewing a product were to own a small number of shares in the parent company of the business they are reviewing. Or similarly, if the employee of a platform company wants to leave a review of a product / service on the platform in a personal capacity. It also will pose problems for B2B reviews, where there is usually a "commercial link" between the reviewer and business being reviewed, with one being the customer of the other. We believe sub sections (h) and (i) can be removed from the guidance entirely without changing the definitions materially. Alternatively, they could be re-worded to clarify that the examples of incentivization include:

(h) being offered a financial interest in the trader or the product being reviewed in exchange for the review,

(i) being offered a commercial opportunity with the trader being reviewed in exchange for the review.

Consumer reviews published in a misleading way (B.20)

The first example given here risks giving the impression that a platform has an unqualified obligation to prevent every instance of catalogue abuse, which appears inconsistent with the obligation on platforms set out in Schedule 20, paragraph 13(3) of the DMCC Act. Sub-paragraph B.20(a) of the draft guidance does not clearly distinguish the creator or author of the review hijacking / review merging / catalogue abuse from the platform which is the publisher of the relevant reviews. Multiple statements

in the draft guidance reinforce the idea that platforms where third parties post reviews need not meet a standard of perfection. For example, B.49 notes the following:

“The banned practice requires traders that publish consumer reviews or consumer review information to take ‘reasonable and proportionate steps’ to prevent and remove from publication fake reviews, concealed incentivised reviews or false or misleading consumer review information. This requirement reflects the fact that consumer reviews originate from third parties and the publisher may therefore make such banned reviews and false or misleading consumer review information available inadvertently.”

We suggest that B.20(a) is clarified to identify the creator or author of the review hijacking / review merging / catalogue abuse as the party who would be in violation of the prohibition – meaning that if it is a third party who is the creator or author, the platform will not infringe the prohibition (save to the extent that it is not taking reasonable and proportionate steps to prevent such misconduct in accordance with Schedule 20, paragraph 13(3) of the DMCC Act).

This could be accomplished by adding a footnote to B.20(a) such as the following:

“In such cases, the creator or author of the review hijacking, review merging, catalogue abuse or similar behaviour would be the party in violation of the relevant prohibition. A platform which publishes the relevant product listings and reviews without having been the creator or author of the relevant presentation of reviews would not violate the prohibition, save to the extent that it was not taking reasonable and proportionate steps to prevent such misconduct as required under paragraph 13(3) of Schedule 20 of the DMCC Act.”

Role of social media (B.23)

The examples in this section would benefit from explicitly mentioning social media platforms as one of the main types of services that can be used by bad actors to facilitate the submission, commissioning, or publication of banned reviews. This would align with the first example given in section B.22, which mentions using groups on social media platforms to facilitate banned reviews. The Coalition believes it is an essential part of the fight against fake reviews that all platform types, including social media firms, should have a responsibility to take proportionate action if they are made aware of specific examples of this behaviour on their services.

In the publication of its final Rule on the Use of Consumer Reviews and Testimonials, the US Federal Trade Commission (FTC) provided a useful and explicit steer in relation to the expectations on third-party platforms. Whilst the Rule itself did not include explicit requirements on social media companies and internet service providers to address the sale of fake reviews, due to the Rule’s focus on “review hosting”, the FTC did however state that “This focus should not be taken to signal that third-party platforms do not bear significant responsibility for combating fake reviews”.

Such clarity from the CMA on this aspect would also be welcome in this guidance, given the need for a holistic approach to be taken - across the fake review landscape - to ensure that this practice is effectively addressed.

Definition and obligations of “publishers” (B.26 and B.27)

As the CMA may be aware, the word “publisher” has been used in a different context under defamation laws in Scotland, Northern Ireland or England & Wales, than the definition that we believe is intended here. In those contexts, being deemed a “publisher” of online speech inherently carries potential liability for being sued for defamation, should that speech be deemed defamatory as to its effect.

If that interpretation were applied here, all review-hosting services could potentially bear liability for the third-party consumer reviews on their sites immediately upon those reviews appearing on their websites and applications. That interpretation would directly contradict the statutory definitions and defences to defamation claims provided by Section 1 of the Defamation Act 1996, Regulation 19 of the E-Commerce Regulations 2002, Section 5 of the Defamation Act 2013 and section 3 of the Defamation and Malicious Publication (Scotland) Act 2021.

Nonetheless, the use of the term “publisher” in the DMCC gives rise to potential confusion, risking a deleterious effect on free speech on review-hosting websites. To prevent that confusion, the guidance should clarify that the term “publisher” is not to be understood in the same way as given in, for example, Section 1 of the Defamation Act 1996 and instead only means a platform/website that hosts/displays consumer reviews. This will help to protect platforms from becoming the target of more vexatious defamation claims, which regrettably is an increasing practice with the intent of exerting undue legal pressure on review-hosting firms to remove negative reviews.

Our members also believe that the obligations of “publishers” in section B.27 should explicitly acknowledge the difference between platforms that display first-party reviews on their websites and those that host third party reviews, where the reviews that appear have been syndicated from another platform. Syndicated reviews are a common practice, but the guidance currently does not make explicit reference to it. It is important that the CMA recognises these different models for hosting review content. Applying the same enforcement regime to all publishers would be inconsistent with the CMA’s view, as described in B.27, which correctly recognizes it is unwise to implement a one-size-fits-all approach to prevent false or misleading reviews. This can be achieved by adding to the end of section B.27 a phrase such as “or because the publisher is displaying syndicated (vs. first-hand) content.”

Prevention and removal policy (B.31)

We welcome the CMA’s clear explanation of prevention and removal policies with respect to fake reviews. However, the last line of the section is not easily understood:

“Likewise, where a publisher allows users any control over the functionality of how consumer reviews and consumer review information is presented, the publisher must make clear what is and is not permitted to ensure the law is complied with.”

One interpretation of this guidance could be that it refers to a consumer using an online platform’s tools to filter different reviews (for example, an e-commerce website that only displays those reviews mentioning the delivery of a product, or a travel website filtering available reviews to only display

those left by people who travelled with their family.) Another interpretation of this same section could be that it refers to websites displaying third party reviews that were originally left on another platform, such that the guidance requires the original platform to stipulate how such reviews should be displayed.

If these are the types of situations intended to be covered, then it is not clear what information needs to be displayed to the user, and it is also ambiguous how filtering or sorting reviews could contravene the law. If it is the latter interpretation, the CMA should distinguish cases where review data is used on third party websites without a platform's knowledge or consent. In these cases, providing clarity on compliance with the law is likely to be useful or effective.

Where platforms have knowledge (for example, in the case of a formal syndication agreement), standard terms are likely to already require that the reviews provided need to be displayed accurately and in accordance with the law. As such it is not clear what value this sentence gives to the guidance and given the risk it could be misunderstood, we believe that platforms should be able to make a judgement about what is an appropriate and clear amount of information on this topic.

Differentiating reviews and complaints (B.33)

Our members wholeheartedly agree with the intent of this section, if it aims to prohibit any trader from discouraging a consumer from leaving a public review purely because it may be negative. However, the current phrasing of the guidance appears to create an unnecessary requirement on platforms hosting reviews, and it is also unclear who this needs to be explained to in the following sentence:

“Publishers should explain the difference between leaving a review which is intended for publication and making a complaint.”

The requirements at (a) to (c) provide clarity, as such we would note that this sentence is unnecessary - particularly as there will inevitably be cases where reviews and complaints have overlap, and determining how and where to draw the line, risks becoming an arbitrary exercise. We therefore suggest this sentence should be deleted.

Protecting genuine reviews (B.44 (b))

We commend the CMA's inclusion of section B.44 - particularly point (b) in the draft guidance, as it is important to ensure that platforms do not automatically suppress genuine reviews, even if the business being reviewed may have complaints about them. We believe this is a critical point and would suggest further strengthening requirements to protect genuine reviews using clear guidance. Moreover, we would welcome explicit guidance explaining that recipients of reviews may themselves be acting in breach of consumer laws by unduly pressuring review publishers to remove reviews without valid reason. This is the same approach taken by the European Union under the Unfair Commercial Practices Directive (see Commission Notice (2021/C 526/01) paragraph 4.2.4).

Internal evaluations (B.48)

In the same vein as our concerns regarding risk assessments (B.34-39), the internal evaluations in section B.48 are not sufficiently defined, i.e. it is unclear what kind of output the CMA expects from platforms. Without further clarification, there is also potential for a duplication of compliance obligations, as services are already undertaking and regularly updating their risk assessments. We suggest the combination of these sections, and allowing flexibility in terms of how platforms should approach risk assessments/regular internal evaluations - particularly in cases where they already take measures to combat fake reviews. This can be done by noting that the level and frequency of risk assessments required will vary according to each platform's level of awareness of the issue of banned reviews and what measures they are already taking to mitigate their incidence.

Conclusion

The Coalition for Trusted Reviews welcomes the opportunity to respond to this consultation. We are committed to collaborating with the CMA to combat fake reviews and support the development of a digital market trusted by consumers and businesses, especially as an industry leader coalescing best practices across platforms.

The CMA's consultation is welcome. As businesses which have sought to raise standards across our industry and take action to ensure consumer and business trust in reviews, we support the principle of what is proposed. The clarifications we seek are to ensure consistency with other regimes, provide adequate time to align existing measures with requirements under the guidance, and to ensure that platforms have a clear understanding of their specific obligations in a reasonable and proportionate manner. We look forward to working with the CMA and other regulators in the future.

Appendix: The Coalition's Best Practices

Members of the Coalition for Trusted Reviews are committed to the following best practices to ensure trust in online reviews and ratings:

1. Maintaining clear and transparent reviews and ratings policies that:
 - a. Detail the requirements for reviews and ratings (including who can leave the reviews and ratings and what is and is not allowed);
 - b. Educate users about the importance of genuine and unbiased reviews;
 - c. Deter and seek to prohibit users from posting and soliciting fake reviews and ratings;
 - d. Explain how reviews and ratings are collected and displayed;
 - e. If applicable, explain how and when reviews and ratings (and reviewers) are verified;
 - f. Communicate to users the actions taken to detect fake reviews and ratings; and
 - g. Articulate, in general terms, what consequences exist when fake reviews are detected
 2. Having systems, processes and experts in place that ensure the trustworthiness of reviews and ratings, which:
 - a. continuously monitor and analyse patterns of use and behavior;
 - b. detect and remove fake reviews; and
 - c. have measures in place to assess the authenticity of reviewers.
 3. Having a reporting process for users to flag suspected fake reviews and ratings, this includes;
 - a. Ensuring there are systems and teams trained to investigate reported reviews and ratings;
 - b. Having trained people to identify and audit fake reviews missed by automated systems, and to investigate reported false positives; and
 - c. Ongoing monitoring and auditing of the effectiveness of the automated systems, policies, the reporting of reviews and review collection.
 4. Take appropriate actions on policy violations and the users (including businesses) that violate policies including;
 - a. Prompt removal of fake reviews;
 - b. Banning, blocking, and suspending accounts that repeatedly submit or solicit fake reviews or otherwise breach reviews and ratings policies;
 - c. Enforcement actions against individuals, businesses, or locations repeatedly linked to fake reviews; and
 - d. Offer prominent warnings to consumers or removal of a business's listing in event of prolonged abuses.
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