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Dear Sir/Madam

Consultation on draft guidance on the protection from unfair trading provisions in the Digital Markets, Competition and Consumers Act 2024

I am writing in reference to the above to offer input in our role as a dispute resolution provider across several sectors, both regulated (for example rail and water sectors) and non-regulated (retail, furniture and home improvement, including the domestic renewable energy market, logistics, licensing, non-regulated finance and comparison sites).

Three brands, Furniture and Home Improvement Ombudsman, Dispute Resolution Ombudsman and Rail Ombudsman (together referred to as "the Ombudsman") operate across these multiple consumer, domestic and non-domestic service sectors as part of The Ombuds Group. It is an independent, not-for-profit, and government-approved ombudsman scheme, offering Alternative Dispute Resolution (ADR) across a variety of industries. The Ombuds Group sees its foundations in a scheme founded in 1992 by the Office of Fair Trading (the early iteration of the now Furniture and Home Improvement Ombudsman), has over 30 years of experience and is led by professionals with expertise in both dispute resolution and legal matters.

The Ombudsman maintains independence, serving neither as a consumer advocate nor an industry body. Additionally, drawing on extensive experience, the Ombudsman supplies staff and expertise to the Independent Football Ombudsman, which was established and funded by the Premier League, English Football League (EFL) and Football Association.

Therefore, as an ADR body that operates outside the court system, in regulated as well and non-regulated sectors and in both mandatory and voluntary areas, we welcome the guidance on the obligations of traders in their dealings with consumers. In our experience, where traders understand their obligations there is less confusion and increased consumer confidence in trader practices. Additionally, the Ombudsman provides advice and training to traders who subscribe to its schemes and clear, concise guidance with worked examples is crucial to the Ombudsman's wider role of promoting responsible retail, advising traders on their internal policies, risk assessments and compliance and identifying and dealing with systemic failings.

We have tailored our responses to the areas most relevant to our expertise, where we believe we can offer valuable insights to assist in shaping your approach based on our experience in the ADR sector.



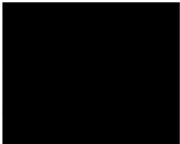
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Thank you for the opportunity to participate in this important discussion. We welcome further engagement and are happy to provide additional information or further clarification if needed.

Yours faithfully



Q1. Do you have any comments on the structure or clarity of the Draft Guidance?

The Guidance is helpfully structured and the information is clear, with examples which are a useful means of putting the framework into real-life scenarios. The Ombudsman has experience of engaging with traders of various sizes and has found that presenting information in a range of different mediums can be helpful in terms of an initial call to action, with signposting to further detail. For example, videos have been used to good effect to present an overview with web-links to additional content. This is particularly important where awareness and legal education are more limited. A further example are the “Quick” and “In-depth” Guides used on the Business Companion websites.

Further, in a principles-based approach to enforcement, where a trader conducts its own audits and assesses how it meets the criteria, this promotes forward thinking and a risk-assessed approach to business practices. This requires a robust enforcement regime and effective ADR mechanism to ensure it is fit for purpose for service providers and users. For example, the implementation of strengthened rights for data subjects in 2018 is an example as to how increased awareness amongst consumers generates the need for trader to understand their compliance obligations and an appetite to get it right. The Information Commissioner's Office has produced guidance which is accessible and clear for traders and consumers alike and this could be emulated here.

Linking the illustrative examples at Annex A into the enforcement and potential outcomes would also be helpful and a potential important deterrent.

Q2. Do you have any comments on the illustrative examples of commercial practices applying the prohibitions? Are there any areas where you think additional examples could usefully be reflected in the Draft Guidance?

The Ombudsman operates in markets that have complex supply chains in which traders sell products designed for an end-user with whom they themselves do not contract. Examples which feature manufacturers, distributors and/or logistics would also be helpful in terms of how they meet their obligations under the UCPs and also to provide some clarity for traders whose customer is a Consumer (as defined within the Guidance) as to what they can expect from the other payers within the supply chain (Paragraph 3.6).

Q3. Do you have any comments on the Draft Guidance on the ‘drip pricing’ provisions in the DMCC Act (found in the ‘Material pricing information’ section of Chapter 9 of the Draft Guidance), including the illustrative examples? In particular, are there any specific pricing practices that have not been included in the ‘drip pricing’ illustrative examples which you think it would be helpful to include, and if so, what should such further guidance specifically cover?

No specific comments, save to note that this is an area that has historically caused confusion and also, anecdotally, frustration amongst traders who are trying to compete in a market which they

perceive as being unfair and 'penalising' those of them that are trying to do the right thing by ensuring they are promoting their products in a way which meets their obligations. The Ombudsman has provided training in this area and welcomes these strengthened provisions and the detail provided within the Guidance.

Q4. Do you have any comments on the Draft Guidance on the banned practice relating to fake consumer reviews (found in Annex B to the Draft Guidance)?

The practice of a trader making an offer of resolution contingent on a Consumer not leaving a negative review may merit consideration within this section of the Guidance.

Q5. Do you have any other comments on topics not covered by the specific questions above? If so, the CMA requests that respondents structure their responses to separate out their views in relation to each of the Draft Guidance's chapters.

Paragraph 6.11 refers to the implications of failure to comply with the requirements of a Code of Practice. An additional example here could be included relating to voluntary ADR. Several markets have seen instances of traders who voluntarily subscribe to Ombudsman or other types of ADR schemes "scheme hopping", where they were unhappy with decisions made against them. This is a particular risk where there is no single Ombudsman in a sector, for example home improvements and where there is no Ombudsman provision at all in a sector, such as aviation. In the absence of mandating ADR in these sectors, for which the Ombudsman strongly advocates, ensuring robust mechanisms exist to capture such practices is key to a well-functioning market with trusted and effective ADR provisions that sit behind it to further ensure consumer confidence. We suggest that a specific example would assist and act as a deterrent to such practices.

The Ombudsman has established an innovative, bespoke case management tool. This tool provides accessible dispute resolution mechanisms for both parties involved in a dispute, while also capturing valuable data to deliver feedback and insights to other stakeholders. The Ombudsman provides information regarding code breaches and its case management tool could be used to flag potential breaches of the UCP which in turn can be used to provide recommendations to traders and anonymised insight relating to these to enforcers. This mechanism also works well in other regulated sectors such as rail, energy and water, and it is often the case that a recommendation will relate to the information made available by a trader relevant to the product or service that is subject to a dispute. The role of an Ombudsman specifically in determining such opportunities for improvement is therefore well aligned to the provisions of the Guidance regarding the various strands of information considered.

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Conclusion

ADR provides consumers with a fair and proportionate means of accessing redress. Ombudsman schemes represent the gold standard of ADR, ensuring accessibility for all consumers while offering traders the benefit of a wider remit. This includes access to additional services that help them enhance their performance and meet legal obligations through training and advice. Further, whilst principles-based approaches have been successful elsewhere as highlighted above, placing the onus on the trader to ensure its compliance can also mean that sole traders and micro-traders in particular may need additional help and support to navigate their compliance obligations.

In our experience, consumer detriment still arises in circumstances where traders are not trying to circumnavigate their obligations but are unsure as to the correct interpretation of the provisions. The Ombudsman welcomes the Guidance and we hope that the information provided in our response can provide some useful insight and potential additions which will help traders understand their obligations and, in turn, increase trust and confidence of consumers.

The Ombudsman represents a strong means by which a consumer can access redress, which is fair and proportionate to the issue at hand. Our service is accessible to all consumers, and traders also benefit from the wider remit of an Ombudsman with access to additional services, such as training, advice and feedback, enabling them to enhance their performance and comply with their obligations in the law. This also benefits the law enforcers both at national and local level, who can signpost consumers to such schemes, confident that both parties are getting a fair deal.

In our experience, working within several sectors, we consider that enhanced co-operation in terms of sign-posting and the availability of consistent advice to traders will be of benefit in empowering consumers to feel confident when entering into contracts. We would welcome the opportunity to work with the CMA to provide such additional information as may be required to strengthen these mechanisms and to educate traders and consumers alike, thereby strengthening the effective operation of the market.