

Sent via email: [consumerguidance@cma.gov.uk](mailto:consumerguidance@cma.gov.uk)

22 January 2025

Dear Sir/Madam,

**RE: Consultation on draft unfair commercial practices guidance**

FSB welcomes the opportunity to provide a response to the above consultation.

FSB is a non-profit making, grassroots and non-party political business organisation that represents members in every community across the UK. Set up in 1974, we are the authoritative voice on policy issues affecting the UK's 5.5 million small businesses, micro businesses and the self-employed.

We welcome the draft guidance on unfair commercial practices to help traders comply with protection from unfair trading provisions. Small businesses unlike larger ones, do not have dedicated compliance teams or legal representatives therefore, it is imperative that any guidance and in particular, any guidance relating to new obligations on traders is clear and easy to understand for businesses without the need of external advice. With that said, we welcome specific examples within the guidance about transactions that are in scope and out of scope of the regulations, and definitions around the different types consumers which can be helpful for businesses to assess whether it is applicable to their business. However, we do have some concerns about the guidance on drip pricing which could potentially lead to uncertainty amongst small businesses, as well as the guidance around fake reviews which could benefit from some specific illustrative examples to help them comply. When they face uncertainty over what is needed to comply, small businesses are prone to gold plate compliance due to fear of enforcement, which is why any guidance should use clear language and provide examples of how to comply. This will not only help to ensure that small businesses do not fall foul of the requirements unintentionally but, also help to ensure that they do not spend significant resources on compliance when this is not necessary to achieve the desired aims. Both consumers and businesses benefit from greater clarity in helping them to make the right decisions, and a market that is built on effective competition and fair practices for businesses and consumers will help to drive growth.

While we are aware that the guidance is not related to B2B practices, we recognise that the provisions are likely to benefit all consumers including small businesses when purchasing relevant goods and services and therefore, will enable them to make more effective choices.

We have not responded to every question in the consultation but, only those where we can offer a valuable view.

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

It could be beneficial if any key steps that a business would need to take or should be aware of particularly, in terms of likelihood of breaching the rules would be made clear at the beginning of the relevant section or appropriately highlighted. This would be particularly useful for any new

requirements that are materially different from the current unfair practices provisions to help small businesses appropriately identify and implement new rules.

*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?*

No. We welcome the illustrative examples of commercial practices applying the prohibitions, as we believe that they will be helpful for small businesses to effectively identify any relevant practices and take appropriate action to stop them, minimising the risk of falling foul of requirements unnecessarily.

*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?*

We have some concerns in relation to the guidance for drip pricing provisions in particular on the requirement to provide the total price of the product in any invitation to purchase including any fees and charges that are mandatory. It may be difficult to display accurate price information if the trader charges transaction fees on the overall order rather than per product, or where the fees vary according to size or if the delivery fees are variable dependant on the destination or the product ordered. Therefore, we would welcome further guidance on how this information should be presented to help small businesses comply. Further, the guidance states that charges should not be excluded from the headline price if consumers could avoid them but doing so would not be viable for example, if collection was available but only in certain stores. Given that this would mainly apply to small businesses who are unlikely to have multiple stores, it would be beneficial to outline some clear examples of how a small business would present such information and assess viability for other factors, to ensure that that they are compliant.

*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)?*

We welcome the draft guidance on the prohibition of fake reviews. As mentioned previously, small businesses often behave in a similar way to individual consumers and can also be significantly impacted by fake reviews. Our research shows that of small businesses that use online platforms, 12 per cent have experienced malicious or fake reviews, which rises to 25 per cent of small businesses that are users of Amazon.<sup>1</sup> Reviews which are vindictive, or misleading can cause serious harm to smaller businesses who are much more vulnerable in the market. For this reason, we have previously called for an investigation into the mechanisms by which small businesses can bring fake reviews to the attention of platforms and get action taken. This is why we are supportive of the obligation on anyone who publishes or provides access to consumer review information to take reasonable and proportionate steps to prevent and remove them from publication.

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<sup>1</sup> FSB report, Net benefits? Small business use of online platforms, 2023 <https://www.fsb.org.uk/resource-report/net-benefits.html>

It is helpful that the guidance outlines that reviews can take various forms including written text such as in a blog or a comment under a product listing, speech or graphic representation, as well as online or on a durable medium. However, it would be beneficial for small businesses in particular, to see some specific examples in light of the various formats listed. While we do not oppose concealed incentivised reviews being part of banned practices as they can distort perceptions for consumers and businesses and therefore be misleading. We do have concerns around clarity of the guidance in relation to reviews which are deemed as incentivised but do not necessarily lead to a consumer directly benefitting such as, through a prize draw. For example, if at the end of the meal at a restaurant a consumer was asked to post a review in exchange of being entered into a prize draw then it would suggest that the review was incentivised but, at the same time there would be no viable way for a small business to be able to identify that specific individual and therefore, record the review as incentivised and separate it from other reviews on their platform. With that said, it would be beneficial to provide some specific illustrative examples of incentivised reviews particularly, where the provisions and guidance are less clear to avoid traders falling foul of requirements unintentionally. This should include examples of how these reviews should be displayed and distinguished from other reviews and, not taken into account towards the products or traders overall rating or ranking.

We welcome the acknowledgement that there is unlikely to be a one size fits all or tick box approach for all publishers to prevent and remove reviews. However, it is worth noting that smaller businesses may not have the same means as bigger ones to prevent and remove them so, it is important that any requirements to do so are proportionate. We have some concerns around smaller traders being required to have a clear policy on prevention and removal of based review and assessment of risk of such materials, as that could potentially be quite onerous without the right guidance and tools in place to help them comply. Small businesses do not have the same resources as larger ones and therefore, it is important to highlight that the policy and the processes that they have in place are less likely to be as sophisticated as that of a larger businesses. Similarly, given that a smaller business is unlikely to have access to external advice in relation to any new requirements, it would be beneficial if templates for policy and risk assessments would be made available to help them comply, as well as guidance on the frequency and detail of regular evaluations needed dependant on risk. It is also likely that a smaller business will be relying on manual rather than automated checks, therefore, any guidance in relation to recording any assessments would also be welcome.

We agree that processes for investigation and reporting must be swift and effective, and it would be beneficial if these are in line with existing processes and procedures which are required by other legislation such as online safety for example. This would help to ensure that any burdens on smaller businesses are minimised. While we note that simply lack of resources and capability will not be sufficient for a publisher not to take action in relation to banned reviews, we do appreciate that publishers business model, medium functionality, type of content and its potential impact are all factors that can be taken into consideration to inform reasonable steps that can be taken.

Finally, we do not oppose sanctioning those involved in submitting, commissioning, procuring or facilitating fake reviews for example, through suspecting or revoking privileges and adding clear and prominent warning on the pages where fake reviews have been identified. However, it would also makes sense that there would be enough opportunity for those wrongly accused to dispute those claims

swiftly if they are identified inaccurately, so they do not disincentivise sales of their products and services.

*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.*

In the offences relating to unfair commercial practices section, it states that for strict liability offences it may be open to traders to prove a defence either by due diligence or innocent publication. It is welcome that a defence can be due to an accident or a mistake, or reliance on information given by another person. Small businesses do not know what they do not know, so the early stages of implementation of new requirements or establishing a business, should be considered as a suitable defence or a mitigation particularly if the trader has not acted in bad faith. We welcome the specific example included on demonstrating due diligence as a defence. It would also be beneficial to show what light touch evidence could be used to show due diligence in relation to other products and services to help smaller business comply.

Yours sincerely,

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Federation of Small Businesses

**For further information please contact:**

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