

Google's Submission - Consultation on the DMCC Act Unfair Commercial Practices Draft Guidance

22 January 2025

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 Do you have any comments on the Draft Guidance on the banned practice relating to fake consumer reviews (found in Annex B to the Draft Guidance)?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 are committed to ensuring that user reviews on our various platforms are helpful to users and of a high quality. Fake reviews not only undermine the quality of information on our services, but also erode user confidence and harm our relationships with businesses. This impacts our credibility and user trust, therefore we are incentivised to combat fake reviews and are committed to working closely with the CMA on this.

Our comments below focus on the areas where we would benefit from further clarification and examples that align with our practices, so that we can continue to address the problem of fake reviews effectively.

Offering services that facilitate the submission, commissioning or publication of banned reviews and information

The draft guidance sets out that it is prohibited to offer services to traders for the facilitating of the submission, commissioning or publication of banned reviews and information. *Paragraph B.23* includes the following example, which is prohibited:

“Running an online platform while being aware of and allowing services to be sold by traders using the platform to offer to post or otherwise arrange for fake reviews or concealed incentivised to be posted on other sites.”

Our understanding is that this will only apply to online platforms who become aware or have prior knowledge that their platform is being used for this restricted purpose. Since this will not be the case for certain online platforms, especially host platforms, we would welcome regard for this in the guidance.

Prevention and removal of banned reviews and false or misleading consumer review information

As mentioned above, we are committed to tackling banned reviews and false or misleading consumer review information and welcome the CMA's assistance in combating them.

The term 'publishers' (defined at *Paragraph B.26*) has a very specific meaning in other aspects of law, such as defamation law. Therefore, we request confirmation in the guidance that the use of the term 'publishers' is not intended to cut across a party's legal rights or be used in any other contexts.

Further to this, the definition of 'publishers' at *Paragraph B.26* is wide and the draft guidance clarifies that this is intended to capture intermediaries that display or disseminate third party reviews. Our understanding from the recent session with the CMA is that publishers will still have a duty to prevent and remove third party banned reviews, even if they are merely licensed or crawled from another website and the publisher has no control over them. Third party reviews in this context are reviews which are clearly identifiable as having been submitted to a website or application, which is not operated by or on behalf of the publisher in question. It will often be impossible for a publisher like a review intermediary to police reviews collected on another platform, for example a licensee of third party reviews will not be able to vet, verify, investigate or remove user reviews in the way proposed by the draft guidance, as they have no control over them. The guidance needs to have regard for this and include additional examples throughout that align with practices whereby a platform licenses or crawls third party reviews from other websites. Our view is that it should be sufficient for consumers to understand that these third party reviews originate from another source and further to this, these third party websites or platforms are under their own review obligations.

We have structured the rest of our comments in line with the various compliance steps set out in the draft guidance for ease.

1. Prevention and removal policy

We understand that publishers should make their policies on user reviews 'readily available to users (including third party traders and consumers)' (*Paragraph B.32*). We note that the draft guidance distinguishes between 'third-party traders and consumers', therefore it would be beneficial to understand whether the CMA expects publishers to have separate review policies applicable to (1) third party traders, to ensure that they are taking steps to verify consumer reviews themselves; and (2) users, who are posting reviews. Moreover, it would be useful to include guidance on what happens if a third party trader and host platform have different policies on consumer reviews. [REDACTED]

[REDACTED] In this scenario, we require guidance on what happens if there is a clash between the two different consumer review policies and which policy should take precedence.

With regards to labelling incentivised reviews (*Paragraph B.13 and Paragraph B.31*), this requirement should be further qualified in the guidance, especially in the context of host providers who do not know if users have been incentivised by third parties, and search engines linking to hosts of reviews, who are two levels removed from the source.

2. Assessing the risks

In developing and implementing prevention and removal measures, we envisage it being difficult balancing the need for rigorous screening and response to suspicious activity with the need not to prevent genuine, lawful and relevant reviews from being displayed (*Paragraph B.38*). [REDACTED]

Therefore, we welcome more flexibility on the types of measures that can be adopted and more regard to the different types of publishers that this impacts in the guidance.

3. Detection

The list of detection measures at *Paragraph B.41* is helpful to understand the types of measures that the CMA considers appropriate, however we are of the view that the guidance should be updated to be less prescriptive having regard to the many different types of publishers that this guidance impacts. Furthermore, we request further examples of detection measures that are relevant for third party reviews that have been licensed and crawled from other websites or applications. As currently drafted, the list of detection measures assumes that all publishers are equal, however what might be an appropriate detection measure for one type of 'publisher' may not be appropriate for another.

It is also important to note that some of the example detection controls listed at *Paragraph B.41* may require more processing of user data than a platform normally would in order to fulfil these compliance requirements. This should be acknowledged and balanced in the guidance.

Vetting traders before joining a trader recommendation platform (*Paragraph B.41(a)(ii)*)

Paragraph B.41(a)(ii) sets out that appropriate detection measures include, 'where relevant, vetting traders before allowing them to join a trader recommendation platform' (TRP). We have previously provided feedback to the CMA in response to the Draft Compliance Advice for TRPs (see our letter to the CMA dated 4 October 2024), which included practices to vet traders.

As we set out in our previous feedback, we do not believe that extremely burdensome vetting checks should be imposed on TRPs. This includes, for example, checking trader criminal records which we consider is something they are unlikely to be able to do in any case. TRPs should not be expected to take steps which are not proportionate, and any vetting steps that involve TRPs collecting and/or processing significant amounts of data should be qualified by reference to data protection considerations.

More broadly, we remain concerned whether TRPs would have a legal basis to exclude a trader from their platform on the basis of previous conduct, or whether a TRP can be expected to make determinations (at scale) of a trader's suitability for their platform based on the TRP's subjective assessments of such conduct.

We believe that any guidance issued in respect of vetting traders for TRPs should not impose any more burdensome requirements than the TRP Compliance Guidance and therefore should reflect that TRPs need only take "*appropriate steps taking a risk-based approach*" in terms of vetting.

Regular checks by publisher (*Paragraph B.41(b)*)

Paragraph B.41(b)(i) gives the example of 'monitoring, considering and keeping sufficient records of the review submission history and the profile of traders, products and reviewers using the site, to be able to spot patterns of behaviour'. In carrying this out, publishers will need to balance any privacy concerns, which should also be acknowledged in the guidance.

Third party notification systems (*Paragraph B.41(c)*)

We understand the need for publicly accessible mechanisms for third parties to report suspected banned reviews (*Paragraph B.41(c)(i)*), however publishers should not be required to detail how they will make determinations or specific criteria in a publicly accessible policy, as this would enable bad actors to evade detection measures. We would welcome confirmation on this in the guidance.

Letting users see a reviewer's public review history (*Paragraph B.41(c)(ii)*)

Instead of letting users see a reviewer's entire public history, a more appropriate measure may be making reviews publicly associated with an account name, but not aggregating all of the user's reviews in one place. This feels like a more reasonable compromise, which serves the same purpose.

Moreover, it is important to note that this measure may have the undesired effect of deterring users from leaving 'genuine, lawful and relevant reviews' (*Paragraph B.38*) if they don't want others to see their full review history. This may reduce the number of genuine consumer reviews, which does not seem to be in the spirit of the law.

4. Investigation

We agree with the position that investigations should be both "thorough and timely" (*Paragraph B.44*), however it is important to recognise that there are other factors which may impact a publisher's ability to carry out investigations in this way, which should be reflected in the guidance.

Firstly, the investigation of suspicious reviews relies heavily on the timely cooperation of users,

Furthermore, the guidance should recognise the difference between types of publishers and how thorough they can be throughout investigations, which needs to be proportionate to their role in the relevant transaction.

The guidance should have regard to these different factors when publishers carry out investigations.

5. Response

We acknowledge the importance of addressing the source of unlawful activity in relation to fake reviews and agree that appropriate measures will depend on the circumstances (*Paragraph B.47*). However, it is important to recognise that in certain cases, sanctions may be difficult. For example, some parties may hire unaffiliated third party entities to submit positive reviews using both real and fake user accounts. Some platforms may be able to identify fake reviews and accounts, but in most instances, cannot conclusively prove that a third party entity was behind them, making sanctions difficult to impose.

Furthermore, we request examples of response measures (*Paragraph B.47*) that are relevant for third party reviews that have been licensed or crawled from other websites or applications, which host platforms will typically have no control over.

6. Internal evaluations

No substantive comments.

7. What is reasonable and proportionate in a given context?

We welcome the CMA's position in *Paragraph B.50* that 'what is reasonable and proportionate will depend on the circumstances of each case', however this position needs to be propagated throughout the rest of the guidance, as much of it is currently drafted explicitly with specific requirements, without the element of 'reasonable and proportionate'.

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.

We are concerned about the proposed implementation date of April 2025 for Part 4, Chapter 1 of the DMCCA. Given that draft guidance consultation responses are due on 22 January 2025, there will only be a very short amount of time between publication of the finalised guidance and the proposed implementation date. Since the proposed guidance requires various product

changes that will likely take a while to implement, our view is that the implementation date should be either pushed back or the CMA should avoid taking punitive action for a certain amount of time to enable companies to better prepare in line with the finalised guidance.