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The UK Expands and Enhances Its Consumer Law Regime

<i>Penalise breach of undertakings</i>	Only courts, with no direct fining power	CMA gains power, including fining power
Criminal offences	CMA prosecutes, court determines outcome	No change

The changes also codify what amounts to a consumer law breach in areas such as commissioned online product reviews, ‘drip pricing’ of unavoidable fees, subscription contracts and savings schemes.

The CMA’s latest consultation sets out how it plans to implement the revised consumer law regime in practice, with draft guidance on procedure and substance. Three notable areas include:

. The draft guidance suggests a stricter approach to when undertakings will be accepted. The CMA will not accept undertakings if compliance or effectiveness would be difficult to monitor, and will not accept undertakings if this would undermine deterrence.

. The draft guidance sets out that the CMA’s objectives in imposing fines for breaches of consumer law will be to deter infringements, to reflect the seriousness and to encourage co-operation with the CMA. In particular, the CMA may impose large fines even if UK turnover is low, if “meaningful deterrence” requires it. Given the limit on fining is 10% of turnover, this creates serious potential liability for large multinational firms operating in the UK.

. Now that the CMA will have powers to impose remedies and fines outside of court action, it has reformed its procedure in a way that more closely resembles the two-phase system of merger control. Whilst the decision to accept undertakings will be made by the responsible CMA officer, an ad-hoc and more independent decision group will then be convened before deciding on the imposition of fines, remedies and related matters.

The CMA has long sought to improve the strength of its consumer law powers and voiced frustration at the limits of its current powers in recent cases. We expect that the CMA will take up new consumer law investigations given it has finally achieved this aim – as stated in the CMA’s latest Annual Plan “*the introduction of a new administrative enforcement model will transform the impact of the consumer enforcement action we take – empowering us to decide when consumer law has been broken, rather than having to take each case to court, and giving us the ability to directly impose significant financial penalties.*” Two existing consumer law defence strategies – to settle through undertakings or to wait and test the CMA’s resolve in court – will no longer be available in the same way. The CMA no longer needs court action to impose the remedies or fines it desires, and that a more direct route to its aims will also grant it greater leverage when negotiating undertakings.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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