Chartered Trading Standards Institute (CTSI) response to DBT Smarter Regulation: Consultation on Improving Price Transparency and Product Information for Consumers

Response sent to – consultation.consumertransparency@businessandtrade.gov.uk

This response is being sent on behalf of The Chartered Trading Standards Institute and has been compiled by the expertise of CTSI members.

ABOUT CTSI

Founded in 1881 (as the 'Incorporated Society of Inspectors of Weights and Measures'), today's Chartered Trading Standards Institute (CTSI) is one of the world's longest-established organisations dedicated to the field of Trading Standards and Consumer Protection. And, after more than 140 years of progress, we remain immensely proud of our close association with the Trading Standards profession and the vital work it continues to do – promoting fair business practices, tackling rogue traders and, ultimately, protecting UK consumers.

At CTSI and through the trading standards profession we aim to promote good trading practices and to protect consumers. We strive to foster a strong vibrant economy by safeguarding the health, safety and wellbeing of citizens through empowering consumers, encouraging honest business, and targeting rogue practices. We provide information, guidance and evidence-based policy advice to support local and national stakeholders including central and devolved governments. CTSI is responsible for business advice and education in the area of Trading Standards and consumer protection legislation, including running the Business Companion service to provide clear guidance to businesses on how to meet their legal and regulatory obligations.

CTSI is contracted to undertake CCAS's administrative functions which facilitates high principles of assisted self-regulation through strict codes of trading practice. This ensures consumers can have confidence when they buy from members of an approved scheme and also raises the standards of trading of all businesses that operate under the relevant sector's approved code.

CTSI run training and development events for both the Trading Standards profession and a growing number of external organisations. We also provide accredited courses on regulations and enforcement.

CONSULTATION RESPONSE

Display of pricing information

1. **Traders are currently required to unit price certain items. Should traders be required to adopt consistent unit pricing, per kilogram or per litre, for comparable products that can be sold by weight or by volume?**

Consistent unit pricing, per kg or per litre, is essential in order that consumers can make a meaningful comparison between products. A 2022 SCOTSS National Fair Trading Group Project into supermarket pricing and convenience stores ("the Project") found numerous inconsistencies in the way everyday household products were unit priced. Semi solid items were variously priced by both weight and volume. We would agree with the CMA opinion in their Groceries Unit Pricing Report published in July 2023 that Schedule 1 of the PMO requires updating to make the required unit of measurement unambiguous.

Transparency is essential for consumers when it comes to comparing prices and making well-informed decisions. Clear and consistent unit measurements empower consumers to determine which product represents better value for their money. When unit pricing lacks consistency, i.e., when one brand sells by weight and another by volume, it can lead to confusion among consumers. Furthermore, it can encourage environmentally conscious choices; for instance, if two products are both priced by weight, consumers are more likely to choose the one with less packaging when unit pricing is fair and uniform.
From a business standpoint, standardised unit pricing can create equal competition among brands and retailers. It ensures that products of varying sizes are priced fairly based on their actual content, effectively preventing the use of deceptive pricing tactics.

Research by Trading Standards has shown a wide disparity in the way in which unit prices is given, not just between stores, but in the same store. For an example the same product, but by different manufacturers may be priced per 100g or per kg which causes additional confusion for consumers. In addition, many supermarkets price loose fruit and vegetables but prepacked per item, which means consumers are unable to make a valid comparison about relative value.

2. **If you answered 'no', please could you explain why.**

N/A

3. **Are there any products for which you think exceptions should be made, or continue to apply, for example herbs and food colourings are currently required to be provided in unit measurements of per 10 grams? If so, which ones and why?**

There is a legitimate argument that products currently required by Schedule 1 to be priced per units of 10 should continue to be permitted given that if they required to be priced per kg or per litre, they would appear very expensive. Some consumer products warrant special considerations for exceptions, i.e., those listed in Schedule 1. Any additional exceptions being considered would need careful evaluation, particularly regarding legal interpretation and the fundamental purpose of unit pricing. Unit pricing is designed to empower consumers in making informed purchasing decisions, taking into consideration the distinctive characteristics of specific products, such as cosmetics and makeup.

There are some products where the unit pricing may be extremely high (for example herbs and spices) and there may be a benefit in having the price for a smaller unit. However, consistency is key to ensure that consumers are well-informed, and the number of exemptions should be kept to a minimum.

4. **Is there anything else you would like to add?**

No.

5. **Are there examples of poor displays of pricing (for example, in relation to illegibility, ambiguity or proximity) that Government should consider when updating the PMO?**

A SCOTSS research project found that among supermarket chains, 4.1% of price indications were missing and 6.5% of unit price indications were either missing or incorrect. This rose to 14.3% and 8.6% respectively for convenience stores.

CTSI believes that the unit price should be at least as prominent as the price of the item so that consumers are easily able to make a comparison between items, but care is needed to ensure that it is easy to differentiate between selling price and unit price. Currently in most shops the unit pricing is extremely small. We have examples of adverts for supermarket items where the unit price is minute in the footer and is practically illegible. If the information must be present, it should be easily legible.

6. **If you said 'yes', please can you provide more detail.**

In many instances where a unit price was stated it was found to be either incorrectly calculated, using different units of measurement, or stated in significantly smaller font size than the indication of the selling price. Shelf edge labels were crowded together in a manner which often resulted in the SEL being placed in proximity to the wrong product and promotional point of sale was often found to obscure the SEL's. Managers often blamed rapid changes in price resulting in staff finding it difficult to keep pace with price changes, offers that had expired, and the corresponding shelf edge labels had not been updated to reflect the new pricing information, failure to replace labels when prices change, human error, and price change day.

7. **We intend to balance the PMO requirements on display of pricing, so they are useful to businesses without being overly prescriptive and burdensome. Do you have views on how we can ensure pricing information is clear to consumers?**

To ensure price transparency for consumers unit prices should be required to be displayed with equal font size to selling prices, and both promotional selling prices, and unit prices should be required to be stated, but with no greater prominence than non-promotional prices. Ensuring pricing is clear to consumers has a positive impact on businesses as opposed to being burdensome. Being clear in guidance in a way that businesses can understand, with practical examples. Unit price should not be the exact size of the selling price because this could cause confusion. Unit prices are too small to be effective in most

cases. Same size unit/selling would cause confusion: you could perhaps stipulate the unit price should be a minimum of 30% of selling price.

8. **Should the display of the promotional unit price be explicitly required for all products offered for sale to consumers on promotion, wherever practical e.g., where the same products in the same quantity are sold together on promotion?**

Yes. In many instances prepacked products on a 3 for 2 offer can be more expensive than buying one unit of the same product in a larger pack size. There may need to be some flexibility considering the product type and complexity of the promotion, but this would need to be carefully navigated. There needs to be a balance between consumer transparency and accommodating the practical realities of the shop. As it stands, it's not clear and it's not always the best offer. Whilst we understand that indicating the unit price for promotional offers may present a bit of a challenge to the retailer, we think it is important that the consumer is easily able to work out which is better value to them (e.g. when there is 3 for the price of two, 30% bigger pack, multipack saving etc).

9. **Should the display of the promotional selling price be explicitly required for all products offered for sale to consumers on promotion?**

Yes. This is already a legal requirement subject to the exception in Article 9 which could be amended to make clear that promotional unit and selling prices must be stated. The selling price should always be clearly indicated to comply with the requirements of the PMO.

10. **Are there examples of items on promotion which should be excluded from unit pricing, such as 'meal deals'? Please provide detail on your answer.**

Perishable items reduced solely because they are approaching their use by date. Unit pricing of meal deal products may also be impossible to effectively unit price given the different units of measurement. It would be virtually impossible to indicate the unit price of meal deals for the very reason that consumers are able to choose the items which go into the deal which may not be the same individual price. For this reason, it is quite acceptable to say that the unit is the meal deal itself.

Small shops

11. **Should the small shops exemption continue to apply?**

CTSI is of the view that the definition of a small shop is amended. Currently any shop which has an internal selling area less than 240sqm is exempt from the need to unit price. Whilst this may be viewed as reasonable to reduce the burden on small businesses, it should not be acceptable that a small branch of a large chain should be exempt just because of the size of the premises. We would suggest that the exemption should relate to the number of employees of the business or the annual turnover. Approaching this in this way would mean that small businesses would remain exempt and reduce the regulatory burden on them, considering their limited resources and space.

12. If you answered 'no', please can you explain why.

N/A

13. Are there other ways Government can clarify or improve the threshold used to determine the small shops exemption in the PMO?

The threshold could be amended to include annual turnover, number of stores or number of employees which would bring supermarket convenience stores who have the resources to unit price into scope. There exists a limited understanding regarding the exemption criteria. It is important to explore the potential adoption of technology, such as electronic Shelf Edge Labels (SELs), as it can alter the situation for retailers who currently manually updates labels. It is worth noting that not all retailers have sufficient resources to transition to electronic SELs. Has the government conducted an economic analysis to evaluate the effects of the existing threshold? Factors like changes in consumer behaviour and the financial burden of compliance for retailers should also be considered. There needs to be more work on this. The Government needs to commit to reviewing and adjusting the threshold looking at economic factors, inflation rates, and changes that happen in the retail industry i.e., advances in technology. There are also regional variations in rent and operating costs. Annual turnover and the number of employees is important. The key point is taking a comprehensive account of a small shops financial position is key.

14. Is there anything else regarding the PMO you would like to tell us?

The current legislation hampers effective enforcement by local authority Trading Standards due to the low level of penalties for breach (this is not due to the legislation; I think they mean that the courts issue low penalties) and particularly because of the very short time bar for reporting breaches. This would require an amendment to the Schedule to the Prices Act 1974 and could result in greater compliance and result in greater priority being applied to the legislation by Trading Standards authorities.

This should be clarified to explain that there is a 3-month time limit for local authorities to act under the Price Marking and the penalties are low. In addition, there is a requirement to serve a '30-day notice' on the defendant, which is unnecessary. We would certainly recommend that the time limits and penalties be brought into line with other Trading Standards legislation, such as the Consumer Protection from Unfair Trading Regulations.

An alternative strategy to regulate Price Marking would be (I would say could be) to make any contraventions of the Price Marking legislation subject to a Fixed Penalty Notice Procedure where continued non-compliance resulted in an increase in the fixed penalty notice issued, like that in place for Age Restricted Sales of tobacco products. This would be the best way in our view (alternative a way in which) that Price Marking issues could be resolved as it is unlikely that contraventions of Price Marking legislation would be taken to court if reported to the PF. A while ago, there was proposal that there would be a pilot for FPN for Price Marking contraventions but the Government shelved them. Maybe this should be resurrected. It is reasonable to assume the PMO is not given a high degree of importance by businesses, and the awareness of the criminal offences it establishes. This is reflected in

the reactions and attitudes of businesses and their management. There is a need to integrate the PMO into a broader legislative context, including legislation like the CPRs, which has not been the case in the context of DRS. FPNs may be the way forward, however, if FPNs are not paid (which is not unheard of) then a report to the Procurator Fiscal will be necessary and if the courts do not backup the FPN regime it will soon become unworkable. The PMO often goes unnoticed by businesses as a legally binding obligation with potential legal ramifications. The government should shift its focus from examining legislation in isolation and consider its potential conflicts with other regulations, such as the DRS and CPRs. Encouraging businesses to adhere to these laws poses a significant challenge. The PMO must be made robust, avoiding a fate like the single-use carrier bags regs.

Obviously, England and Wales do not have a Procurator Fiscal but CTSI agree in broad principle to what SCOTTS have said. Taking action through the courts for pricing issues, is difficult because of the time limits and with such low penalties. We think that the Price Marking Order needs reviewing alongside other Trading Standards legislation to ensure that it's not in conflict with other requirements and is fit for purpose in a digital age.

Deposit Return Schemes (DRS)

15. **To make it clearer to consumers, we propose that retailers should display the cost of the deposit separately, so consumers know how much money they will get back if they return the eligible item to a return point. Do you agree?**

CTSI is still gathering information from experts on this topic. The opinion of the Scottish Trading Standards Service (SCOTSS) is that they would agree with this position. They assert that the purpose of the unit price is to allow consumers to make a relative comparison of different products, and/or to determine whether there is value for money in buying it in a larger quantity. The packaging does not form part of this comparison, only the quantity of product present. Including the deposit would muddy this calculation and confuse consumers. Therefore, it should not be included as an element of the unit price calculation. CTSI is happy to speak to DBT directly on this issue.

16. **Should the displayed unit price be calculated exclusive of the deposit so that the price per unit of drink remains comparable?**

Yes, we would agree with this position. The purpose of the unit price is to allow consumers to make a relative comparison of different products, and/or to determine whether there is value for money in buying it in a larger quantity. The packaging does not form part of this comparison, only the quantity of product present. Including the deposit would muddy this calculation and confuse consumers. Therefore, it should not be included as an element of the unit price calculation.

17. **If you answered no, could you please explain why.**

N/A

Hidden fees and drip pricing

18. **To what extent do you think current law protects consumers from any detriment that may be caused by drip pricing?**

The current law protects consumers from detriment in relation to mandatory fixed fees under the Price Marking Order 2004, the Consumer Protection from Unfair Trading Regulations 2008, and Schedules 1 & 2 of the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013. However, protection from detriment is considerably less in relation to mandatory variable fees and optional dripped fees requiring, as it does, proof that they caused a transactional decision by either misleading action or omission. The Consumer Protection from Unfair Trading Regulations 2008 covers drip pricing under the header of misleading omissions (Reg 6), providing information in an untimely way.

19. **Are there further steps the Government should take to better explain or promote these rules, to improve consumer protection?**

Given the financial scale of consumer detriment from drip pricing revealed in the DBT commissioned research into drip pricing published on 4 September 2023 it is contended that explanation or promotion of guidance alone may not be sufficient, and that legislative change may be required. Guidance published should be sector specific rather than relying on the CTSI Guidance for Traders on Pricing Practices. The legislation exists, but some businesses do not seem to be aware, and many are not complying. If the requirements were specific this might increase compliance.

20. **Would an explicit requirement on traders to include all mandatory fixed fees in the up-front price be effective in reducing consumer detriment? Or would better guidance explaining the existing rules be more appropriate?**

As per the DBT report of Sept 2023 (Estimating the Prevalence and impact of online drip pricing) a case could be made that perhaps initially explicit requirements could be trialled in key sectors e.g., transport and communications (as 72% of providers found to be employing drip pricing.)

It is already an explicit requirement under the legislation referred to in the response to question 18 that mandatory fixed price fees should be included in the indicated price so strengthened sector specific guidance may be more appropriate. For the price not to be a misleading action (Reg 5 CPRs) or a misleading action (Reg 5 of the CPRs) or a misleading omission (Reg CPRs) all mandatory prices should be included in the up-front price.

21. **Is the provision of mandatory variable fees a problem that Government should seek to address? Please explain the reasons for your answer.**

The issue of mandatory variable fees should be addressed as the extent to which they are variable and not fixed can be blurred. These drip pricing fees are not confined to purchasing through desktop website purchasing or apps. An example is the imposition of admin fees when purchasing motor vehicles. These fees are commonly not included in the indicated

price and either not stated or referred to in small print. The dealerships argue that this admin fee is not a fixed fee but depends on the overall finance package involved and that it is negotiable, but for the vast majority of consumers it is an imposed fixed fee. Another example is that in home furnishing showrooms some companies impose a compulsory delivery fee on consumers, which is not included in the indicated price. The average consumer would anticipate a charge for delivery to their home but not a "delivery to branch" charge when they choose to uplift the product themselves. This fee is fixed but is not added to the indicated price because it is payable regardless of the number of items purchased so cannot be calculated per item in advance.

22. **Should traders be required to make clear the existence of mandatory variable fees, and how they will be calculated, when they display the price for a product? Or would better guidance explaining the existing rules be more appropriate?**

Traders should be required to state the existence of mandatory variable fees and how they will be calculated in a timely manner at the earliest possible stage in the customer journey and prior to a transactional decision having been made. Given the transactional decision test in relation to such fees an option would be to consider strengthened sector specific guidance together with strengthening the CTSI Guidance and considering putting it on a statutory footing as was the case with previous pricing guidance issued under the Consumer Protection Act 1987.

23. **Are there any circumstances in which traders would not be able to inform consumers about the existence of mandatory variable fees and how they will be calculated at the time of providing them with the price of a product?**

An area where this may be applicable is about things such as postage charges, where the price may depend on the weight of the final order. In such circumstances it should be made clear that there is a mandatory postage charge and the scale of these charges.

24. **When should traders that provide optional fees for products present these to consumers in the purchasing process? Please explain the reasons for your answer.**

Optional fees should be presented early in the customer journey as evidence from behavioural studies clearly show that once a customer has invested significant time on their proposed transaction, they are reluctant to abandon it, even as the headline price increases. Pre ticked boxes should not be permitted. In addition, optional fees should not be added to a price so that the consumer must remove them (e.g., 'optional' service charges for meals).

25. **Are there any types of optional fees that cannot be presented to consumers early in the purchasing process? If so, what are these, and why?**

Possibly suggested tips which are based on a percentage basis, but we would not recommend such practices.

26. **Are there any other features of products or services that are presented as optional fees but are in practice unavoidable for most, or certain groups of consumers? For**

example, is it really optional, when buying airplane tickets for parents with young children to choose to sit together?

Services charges in restaurants, and aeroplane seating, are good examples.

27. **In what circumstances might it be reasonable for traders to charge for features that are presented as optional but are in practice unavoidable for certain groups of consumers? What might the consequences be of any action to limit this practice?**

The important thing is that consumers are not misled and know what the total cost will be to them before making the decision to purchase.

28. **Should the law be strengthened to address optional dripped fees that are detrimental to consumers, or should guidance be produced for specific sectors that sets out how to provide optional fees in a way that is fair, transparent, and lawful? Please explain the reasons for your answer.**

The production of sector specific guidance should be produced for specific sectors in which drip pricing is most prevalent, as it may be difficult to legislate in relation to fees which are genuinely optional. The legislation is minimal when it comes to pricing of services – the CPRs merely mentioning Reg 5(4) (g) & (h) – 'the price or the manner in which the price is calculated' and 'the existence of a specific price advantage'. More clarity of the legal requirements would be helpful, alongside better statutory guidance.

29. **Should any guidance that is produced on optional fees be targeted to specific sectors? If so, which sectors should guidance focus on?**

Specific sectors which guidance should focus on include the hospitality, travel, entertainment, ticketing, and home furnishing (fabric protection, warranty insurance etc.) sectors.

Fake reviews

30. **Do you agree with the addition of the following commercial practices to Schedule 18 of the DMCC Bill?**
    a. **Submitting a fake review, or commissioning or incentivising any person to write and/or submit a fake review of goods or services.**
    b. **Offering or advertising to submit, commission or facilitate fake reviews.**
    c. **Misrepresenting reviews, or publishing or providing access to reviews of products and/or traders without: taking reasonable and proportionate steps to remove and prevent consumers from encountering fake reviews; taking reasonable and proportionate steps to prevent any other information presented on the platform that is determined or influenced by reviews from being false or in any way capable of misleading consumers.**

We strongly support this proposal. Online reviews now play a key part in decision-making for many consumers and if fair and accurate can be very beneficial to promoting good and

fair purchases. In addition to seriously misleading consumers, the provision of fake reviews undermines this whole system. We think that the seriousness of this matter makes it imperative that fake reviews are included now as a banned practice and constitute criminal offences, rather than being included at a later date when the breach would be civil only.

It is also important to note that fake reviews can also damage legitimate businesses by making false negative claims. Although less common than fake positive reviews that promote a poor business, this practice does occur and can be particularly detrimental to legitimate small businesses.

We think that (c) is essential as it extends the breach from only deliberately submitting fake reviews to circumstances where reasonable steps have not been taken to prevent fake reviews being supplied. This extra step will be essential in making these provisions effective as it will require platforms to take active steps to prevent fake reviews appearing.

Whilst we believe that the existing legislation covers these matters, there would be an advantage in including them as specific schedule practices for the purposes of clarity for both businesses and consumers.

31. **Do you agree that adding the misrepresentation of consumer reviews in ways which are likely to mislead consumers to Schedule 18 of the DMCC is sufficient to prohibit traders from:**
    - **Deleting or suppressing negative reviews;**
    - **only publishing positive reviews;**
    - **applying different weightings to reviews based on the source consumer;**
    - **publishing or providing access to incentivised reviews that are not clearly labelled as such;**
    - **disabling the consumer from changing default sorting options; and presenting reviews of a different product as relating to the product a consumer is considering (sometimes known as review hijacking, review merging, or catalogue abuse).**

As stated above, we think that part (c) is essential and largely should be effective in significantly reducing the incidence of all the practices listed in Q31. It is broadly framed, allowing the steps that need to be taken to vary according to the specific circumstances. For example, it may be reasonable to expect a small operator with no record of facilitating misleading reviews to take fairly rudimentary proactive steps but to respond to any information received that suggests a problem. At the same time, a bigger platform that facilitates many thousands of reviews every day would presumably require to have detailed documented procedures that take a very proactive approach and not rely only (or even mainly) on information received.

32. **Do you agree that guidance should be published to help traders understand and comply with the proposed requirements concerning "reasonable and proportionate steps"? If so, what form should this guidance take?**

We support the publication of Government guidance to clarify what "reasonable and proportionate" mean in practice, preferably combining the use of examples of common scenarios with principles-based provisions which are applicable to all current situations. We think that this balance can be struck: the inclusion of clear real-world examples to assist businesses in developing their policies while still not being over-prescriptive, and thus providing some future-proofing in being applicable to future unanticipated developments in eCommerce.

We welcome the proposed central involvement of the CMA in the production of such guidance and would strongly advocate that Trading Standards representatives are also closely involved in that process, bringing the practical everyday experience of "on-the-ground" officers to the discussion.

33. What reasonable and proportionate steps do you consider traders should take to remove fake reviews and prevent consumers from encountering them?

All businesses of whatever size and scale should act promptly on the receipt of credible information suggesting that they are facilitating a false or misleading review. All businesses should also take some proactive steps, and these should be extensive, documented and under constant review in the case of large companies that facilitate the communication of large numbers of reviews.

We acknowledge that this is a challenging area for businesses, but there are certain checks which can easily be done, such as looking at the wording of reviews, or identifying a large influx of reviews being uploaded on the same day. It would help if guidance could be given to assist businesses, particularly small businesses.

34. What reasonable and proportionate steps should traders take to prevent any other information presented on the platform that is determined or influenced by reviews from misleading consumers?

As above. The guidance should be extensive and detailed, and the contents determined after extensive consultation, including with businesses, consumer groups and regulators. Trading Standards can make a key contribution.

35. Should traders in scope of these requirements be expected to:

- **a. Have proactive detection processes in place to identify suspicious reviews;**
- **b. Have procedures for removing and preventing consumers from encountering fake reviews; and**
- **c. Sanction users and businesses in response to fake views.**

In line with the above, any sizeable operation must have policies that incorporate a, b and c to be effective in combatting fake reviews. They must also cooperate promptly with reasonable requests from regulators like Trading Standards.

36. Do you agree that some traders should also be expected to:

a. **have a process for assessing the risk that fake reviews will appear on their website;**
b. **a reporting mechanism that allows people to report suspicious activity; and**
c. **undertake regular evaluation of the effectiveness of these systems?**

As above, a combination of elements must be in these policies and processes to make them effective including all the elements listed in Q36. We would expect this to be a part of the process.

37. **Are there any kinds of review that are (a) missing from the description above, or (b) that you think should not be in scope? If so, please explain why.**

We think that all consumer-based reviews should be in scope and then breaches be dealt with proportionately as required by consumer law. The description in the consultation is wide-ranging and comprehensive.

38. **Do you think that the definition of fake review should require a consumer to have bought or used the relevant product?**

The fundamental starting point for a review to be fair and reasonable is for it to be based on an actual experience of the person posting the review, this is particularly important when looking at products sold. In light of that, the proposal in Q38 seems reasonable.

We would like to raise the point that if the review is relating to customer service this would make it more difficult. Sometimes customers have such a poor experience that they do not actually enter into a contract. Obviously, this makes things more difficult for the business as they may not have the customer details in order to verify the review.

39. **Do you agree with the policy on incentivised reviews above? Are there any forms of incentivisation that would not be covered by it?**

Yes, and we have no further suggestions.

40. **Should the proposed new banned practices on fake reviews be subject to criminal liability? If so, which? Please explain the reasons for your answer.**

Yes, and this is a vital component. 29 out of the current 31 banned practices are criminal offences and these will be re-enacted in the Bill. Facilitating fake reviews is a seriously fraudulent matter which causes significant detriment to consumers and undermines a review-based approach to making purchasing decisions. It is as least as serious as (in many cases probably much more serious than) the existing banned practices and should be a criminal offence in the same way, giving enforcers and the courts the full range of options to tackle this offending. We agree strongly with this proposal. Fake reviews are already misleading actions, which are subject to criminal liability, and could amount to fraud, so it would be illogical for the practices not to be criminal offences.

41. **Are the current banned practices in Schedule 18 relevant? If no, please identify which you think are redundant and explain why?**

We think all are relevant and should be retained.

42. **Do any of the banned practices require updating or clarifying? If yes please elaborate which one, what in your view needs changed and why.**

Some changes to the banned practices have already been made in the first draft of the Bill and we support these. For example, paragraph 18 of Schedule 18 refocuses false claims around medicinal products from "cure" to "treat", thus covering many more instances of unfair practice that are encountered by Trading Standards. We have no further suggestions to amend existing provisions in Schedule 18. CTSI has made suggestions on this to DBT.

43. **Are there any practices you think should be added to Schedule 18? If yes, please identify which and why?**

When the legislation was first being drafted, the UK wanted to include the practice of 'clocking' motor vehicles (i.e. turning back the odometer). It would be helpful if this could be included, without the transactional decision element which makes taking action against the perpetrators more challenging.

Online platforms

44. **Which consumer harms are particularly prevalent and/or detrimental on online platforms?**

Traders failing to disclose their commercial status and providing insufficient (sometimes inaccurate) identification information. One consistent problem is a lack of clarity over the status of the seller on an online platform that enables sales. If the seller is a business, the buyer has a strong suite of rights and the seller a variety of obligations under consumer laws. If the seller is a consumer, almost none of that applies, so the status of the seller makes a big difference to consumers and regulators alike. While this is not a problem on some selling platforms where clearly all the sellers are in business, most platforms have a mix of consumer and business sellers. This applies not only to sales of goods, but also to supply of services, digital content and accommodation on e-marketplaces, social media sites and collaborative economy platforms. We think that – as a minimum – there should be an obligation on platforms to clearly indicate the status of all sellers and to provide information as the consequences for consumer rights.

Whilst not clearly prevalent due to lack of exposure/complaints, multi-level marketing (MLM) schemes, particularly in the cosmetics and health supplements sector, that potentially breach banned practice No 14 re pyramid promotional schemes are likely to be a significant underreported issue. These schemes are promoted on social media sites, especially by influencers and those caught up in the sales (recruitment) processes.

Again, particularly in the cosmetics/beauty sector, also probably underreported, social media Influencers/content creators failing to disclose the commercial intent of posts, especially after accepting payment or obtaining free products, e.g., #AD, #GIFT. Identifying these posts within these platforms is a challenge due to the lack of transparency in the way posts are distributed and structured.

Add in traders who appear to be UK-based but are actually based in the far east which often leads to consumer detriment.

45. What do you understand the requirements of professional diligence to require in practice from online platforms?

The professional diligence provisions of the CPRs 2008 provide a broad and "principles-based" framework for judging whether practices are fair and acceptable. We favour this approach because the alternative – detailed prescriptive provisions which attempt to specifically cover every circumstance – risk being incomplete and quickly going out of date. However, we do think that the concept of professional diligence is currently not well understood by businesses, consumers and regulators and requires clarification. We think that it requires the very highest standards from big online platforms, given their scale of operation, resources and market influence. We think this translates to platforms being required to take very active steps to identify problems and deal with them very promptly and effectively, and to cooperates fully with reasonable request from regulators. But this may not be clear from current provisions, and the lack of clarity grows as consideration is given to more detailed matters. In absence of legislative clarification of "professional diligence", clear Government-backed guidance or a Code of Conduct could provide positive ways forward.

46. Are you aware of any examples of where the requirements of professional diligence have hampered innovation in the online platforms sector?

No.

47. Are there particular practices of online platforms where the application of the professional diligence requirements is uncertain?

See Q45 above.

48. How should best practice for complying with the requirements of professional diligence for online platforms be set out and communicated?

As stated above, we would prefer this to be in legislation. If that option is not to be pursued, the next best options may be a formally recognised and compulsory Code of Conduct, or even strong Government-issued Guidance. Either of these options should be detailed and produced after significant consultation and discussion. While there should still be room for some variation of interpretation of evolving eCommerce developments, the Code or Guidance should seek to pin down the main issues in as much detail as possible. It must also make clear that it applies to all platforms that enable online sales and not just e-

marketplaces. This refers to social media sites and various collaborative economy platforms. We do not support self-regulation of these matters. We think that a self-regulatory approach can be appropriate in some circumstances, but this is not one of them. Any Guidance/Code of Conduct must be underpinned by law which allows action by regulators, to ensure consumer protection and public confidence.

49. **Is the current definition of professional diligence appropriate for regulating online platforms? If not, how do you consider it could be improved?**

We understand the definition has already been amended in the DMCC Bill to remove the word "special".

Protection from unfair trading: further issues

50. **Should the Government add further commercial practices that are unfair under Part 4, Chapter 1 to the list of prohibited practices which attract private rights of redress? Please explain your answer.**

We believe that all breaches should give consumers rights of redress – that includes misleading omissions and the schedule practices. If there are offences, and consumers have been adversely affected, they should be able to get compensation.

51. **Should the power to make applications to the court for online interface and interim online interface orders under Part 3 of the Digital Markets, Competition and Consumers Bill be extended to additional enforcers (listed in clause 144 of the DMCC bill)?**

We strongly support the extension of this power to additional enforcers, including local authority Trading Standards services (LATSS). On a daily basis, Trading Standards investigators are dealing with content, accounts and indeed sometimes full websites that are facilitating illegal and misleading practices. We expect that this "takedown" power would be an effective "backstop" to ensure that platforms and other internet intermediaries act promptly to remove illegal content. On the relatively small number of times when we expect it to be necessary to go to court, the LATSS will have to present a robust case, ensuring proportionality and necessity. It is not a power that could be used lightly.

Trading Standards probably carry out more online investigations than the CMA and it would be helpful to have this power to protect consumers from being misled and losing money.

52. **In what circumstances do you expect this power to be used by non-CMA enforcers if it is so extended?**

See answer to Q51. Any cases that get to court are likely to be among the larger investigations, probably involving very high sums in consumer detriment.

53. Are there any downsides to extending this application power to additional enforcers, provided the decision to make online interface and interim online interface orders will continue to rest with the court?

We cannot see any downsides to this proposal, given the “check and balances” that are written into the system. It is explicitly a power of last resort.

54. Should either or both public designated enforcers and private designated enforcers, as defined in clause 144 of the DMCC Bill, be empowered to seek online interface and interim online interface orders from the court?

We do think that the power should be extended to all public enforcers, we do not have a view regarding private enforcers.

55. Please explain your answer to the question above.

N/A