

## CMA to collect evidence on online reviews

The UK Competition and Markets Authority (CMA) released on 26 February a call for evidence on the use of information in online reviews and endorsements, stating its awareness of concerns 'about the trustworthiness or impartiality of information in some reviews and endorsements.'

"Consumers put stock on customer ratings on websites," said Simon Barnes, Partner at Shoosmiths. "This is only good if the reviews are genuine or, at least, if sites have disclosed any commercial interests that may be at stake." "At this stage, the CMA's attention seems to be towards identifying any potential breaches of consumer protection legislation, in particular misleading sales practices," adds Paul Stone, Partner at Charles Russell Speechlys.

The CMA has expressed its interest in an array of platforms on which reviews and endorsements appear, such as blogs. "The CMA recognises that internet practices evolve quickly for consumers and suppliers and that, if it is to remain on top of the issues, it needs to keep itself informed of market developments," explains Barnes.

The deadline for responses is 25 March 2015.

## US Consumer Privacy Bill of Rights includes Safe Harbor

The White House published a discussion draft of its proposed Consumer Privacy Bill of Rights on 27 February, which aims to establish 'baseline protections' for consumer privacy in the US through the creation of enforceable codes of conduct. The proposed legislation would give consumers more control over how their data is used and enable firms to gain 'Safe Harbor' from enforcement action through the approval of enforceable codes of conduct that demonstrate compliance with the privacy principles.

"Unlike the EU, the US does not have a comprehensive privacy law," explains Mark Brennan, Partner at Hogan Lovells US LLP. "Instead, the US takes a sector-based approach - providing privacy protections for children's data, health data, financial data, and other categories of data. The Privacy Bill of Rights attempts to move

the US closer to a comprehensive model that applies across all sectors."

The proposed legislation would require a 'covered entity' - defined as 'a person that collects, creates, processes, retains, uses, or discloses personal data in or affecting interstate commerce' - to provide individuals with notice about the entity's privacy and security practices, adopt privacy by design processes, and contractually bind third parties when transferring data. Each covered entity would also be required to provide individuals with a reasonable means to control the processing of their personal data 'in proportion to the privacy risk to the individual and consistent with context.' "The draft places too much emphasis on restricting the use of data based on the context or original purpose of collection," said Brennan. "Data use restric-

tions should instead be based on concerns of more tangible harms."

The FTC is tasked with primary responsibility for promulgating and enforcing the regulations, which includes approving codes of conduct for the Safe Harbor. "The 'Safe Harbor' process - criticised by some consumer privacy groups - would appear to be a reasonable approach for industry. E-commerce and brick and mortar businesses could align their practices under a Safe Harbor, which would save time and money and present a defence in the event of an enforcement action. The lack of a private right of action is also beneficial for businesses," said Michelle W. Cohen, Member at Ifrah Law. "The concepts of transparency and access may be key to rebuilding consumer confidence following many high profile data breaches."

## FCC adopts Open Internet rules as EU poses 'two-tier' system

On 26 February the US Federal Communications Commission (FCC) adopted Open Internet rules, which reclassify broadband internet service providers as common carriers under Title II of the 1934 Communications Act and prohibit broadband providers from throttling internet traffic or offering paid prioritisation services. Amongst its critics, Republican Commissioner Ajit Pai argues that the new rules will stifle innovation and lead to higher rates for consumers.

However, George Foote,

Partner at Dorsey, believes "Nothing will change: the internet will remain open and neutral. ISPs show no likelihood of slowing investment in the internet."

Litigation by broadband providers seems probable; the FCC's previous Open Internet rules were struck down in court. "The FCC seems to have fortified the rules with a formidable body of armour. There is good reason to believe the third time will be the charm," said Pantelis Michalopoulos, Partner at Steptoe & Johnson.

By contrast in the EU, a 'two-tier' system was proposed by Member States' telecoms ministers on 4 March to ensure providers 'treat traffic in a non-discriminatory manner' but which allows exceptions for specialised services 'other than internet access services.' "It isn't clear what specialised services the EC is thinking of," said Rhys Williams, Partner at Taylor Vinters. "But given how slowly laws get passed in Europe at the moment, we are probably a long way off having a two-tier system enshrined in law."

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