



Response

Smarter regulation: consultation on improving price transparency and product information for consumers

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John Noble
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Response from the British Brands Group

1. Introduction

The British Brands Group (the Group) is a not-for-profit member organisation of companies of all sizes producing branded consumer goods. A confidential list of members accompanies this response. We ask that this list is not published.

Branded companies are catalysts for innovation as they compete on the basis of quality, range and reputation as well as on price. They thrive in markets where there is vigorous competition to spur innovation and where consumers seek to make informed, accurate buying choices often at great speed, sometimes in less than a couple of seconds, as in a supermarket.

Brands operate effectively both in bricks-and-mortar and online markets, allowing shoppers to understand products and offers at both a rational and emotional level, determining instinctively whether the product being presented to them is or is not for them.

Delivering effective product performance that meets or exceeds consumer and shopper expectations over many years builds reputation and trust with individuals. As those individuals multiply in number, significant value is created, whether through scale, premium pricing or both, value that may then be targeted by those wishing to free ride off the brand owner's investment and success.

Informed consumers and effective consumer protection are essential elements in a market in which brands may thrive, enabling their ongoing investment in innovation, quality and reputation. This consultation is therefore directly relevant to a healthy environment for both shoppers and the brand business model.

Unit pricing method

Question

1	<p><i>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?</i></p> <p>We support consistency in how unit pricing of comparable products is presented to shoppers as this aids understanding and reduces friction in the way shoppers make choices.</p>
2	No response.
3	<p><i>Are there any products for which you think exceptions should be made?</i></p> <p>While we adhere to the principle of consistent unit pricing, there are specific product categories where a weight or volume unit may not be optimal in ensuring consumers have access to accurate and optimal information.</p> <p>The sweetener category illustrates the potential challenges of cross-category consistency. Sweeteners come in two main formats, tablets and granulated:</p> <p>Tablets – the unit for each tablet is a “sugar spoon equivalent” which is standardised across the UK. Weight is an inappropriate unit as suppliers use different ingredients and carriers to make the final tablet. A heavier tablet does</p>

	<p>not mean more sweetening strength or better value for money. It just means a heavier tablet.</p> <p>Granulated – There are two main styles, traditional <u>powder</u> (very lightweight, typically using maltodextrin as a carrier) and <u>modern</u> (using a heavier carrier such as Erythritol which gives a mouth crunch similar to sugar). A weight-based unit measure would not bring any clarity to shoppers. Each pack currently shows the number of sugar spoon equivalents (servings), providing the optimum unit measure (or multiples thereof, such as cost per X sugar spoon equivalents).</p> <p>For greatest clarity for shoppers and for strongest competition in the category overall, the appropriate unit of measure is sugar spoon equivalent. This would provide the easiest and most relevant means of price comparison for shoppers.</p>
4	No response.

Legibility and prominence

5-7	No response.
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Offers and promotions

8	<p><i>Should the display of the promotional unit price be explicitly required for all products offered for sale to consumers on promotion, wherever practical?</i></p> <p>On balance, we support the display of promotional unit prices wherever practical.</p> <p>We acknowledge however that unit pricing based on weight or volume has its limitations in ensuring shoppers have the information they need to make accurate choices. As illustrated in the sweeteners category above, price is only one vector of competition and does not represent a full comparison. A weight or volume-based unit is not an indicator of efficacy. It also does not allow for products that may be more concentrated than others.</p>
9	<p><i>Should the display of the promotional selling price be explicitly required for all products offered for sale to consumers on promotion?</i></p> <p>We support the display of promotional unit prices.</p>
10	No response.

Small shops

11-14	No response.
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Deposit Return Scheme

15	<p><i>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?</i></p> <p>Yes. The price of the product should be presented separately to the deposit. This conveys the two prices in a way that does not mislead shoppers, supports equitable</p>
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	competition between those products carrying the deposit and those that do not and safeguards the reputation of the producers who may otherwise be thought to be raising prices unreasonably.
16	<p><i>Should the displayed unit price be calculated exclusive of the deposit so that the price per unit of drink remains comparable?</i></p> <p>Yes, the displayed unit price should be calculated exclusive of the deposit, for the reasons stated above.</p>
17	No response.

Hidden fees and drip pricing

18-29	No response.
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Fake reviews

30	<p><i>Do you agree with the addition of the following commercial practices to Schedule 18 of the DMCC Bill?</i></p> <p>We agree that a review should be considered fake if it purports to but doesn't represent a genuine consumer experience and that reviews targeted at consumers and relating to the promotion or supply of products should be in scope.</p> <p>The focus should be on <u>traders</u> involved in the production and/or presentation of fake reviews, whether to gain a competitive advantage or to disrupt a competitor. A trader should not be expected to be able to identify <u>individuals</u>, whether a purchaser or user, who may write a fake review for whatever reason. It would be difficult for a trader to identify and assess the veracity of such reviews.</p> <p>We therefore support the addition of the stated commercial practices to Schedule 18.</p>
31	<p><i>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 [...]</i></p> <p>We agree that the six practices listed in this question should be deterred. Adding practices to Schedule 18 may be sufficient to prohibit practices, though the extent to which such a prohibition will have any market effect will depend on the likelihood of enforcement and the risks associated with infringement.</p> <p>The point is illustrated by the sale of products in packaging misleadingly similar to that of familiar brands, explored further below. Such a practice is addressed by Paragraph 5 and Clause 13 of Schedule 1 of the Consumer Protection Regulations. However there has been no credible enforcement (one successful action by Trading Standards in 2008 and none by the CMA) so the practice continues to be prevalent on the market as there is no jeopardy for non-compliance.</p>

32	<p><i>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?</i></p> <p>Guidance will be essential to help traders understand what “reasonable and proportionate steps” are likely to comprise, how they should be taken and evidence required to demonstrate compliance.</p> <p>Compliance, and therefore the guidance, needs to focus on the activities and the behaviour of traders rather than of third parties over which the trader has no control or insight. As an example, a person submitting a review that does not reflect a genuine experience may be a user <u>or</u> a purchaser, so requiring the cross-checking of a review with a purchase may not be an appropriate check.</p>
33	<p><i>What reasonable and proportionate steps do you consider traders should take to remove fake reviews and prevent consumers from encountering them?</i></p> <p>In addition to having processes for consumers to report suspicious activity, it is important for <u>affected brand owner</u> to be able to report suspicious or inappropriate reviews. Such reports need to be investigated promptly and reviews taken down promptly if found to be fake. Branded suppliers have strong incentives to ensure reviews represent genuine consumer or user experiences and are in a strong position to identify anything that is suspicious, whether in terms of being fake or inappropriate in terms of not relating to the product to which the review is attached.</p>
34	<p><i>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?</i></p> <p>In addition to aggregated reviews, star ratings and endorsements, fake reviews are also likely to influence the operation of algorithms that control the rankings of products and their presentation on a web page. Traders need processes in place to ensure that reviews found to be fake on their sites do not influence adversely fair competition between products. This would involve prompt remedial action for any effects of fake reviews on the platform and its performance, with subsequent tests to ensure any influence has been removed. ‘Prompt’ should be no longer than seven days and ideally shorter. It would be good practice for the affected brand owner to be notified of the action taken to address any fake reviews it had notified.</p>
35	<p><i>Should traders in scope of these requirements be expected to:</i></p> <ul style="list-style-type: none"> <i>a) Have proactive detection processes in place to identify suspicious reviews;</i> <i>b) Have procedures for removing and preventing consumers from encountering fake reviews; and</i> <i>c) Sanction users and businesses in response to fake views.</i> <p>Traders should have detection processes in place to identify suspicious reviews along with procedures for their prompt removal if found to be fake, to ensure consumers do not encounter them and are not subjected to their influence through the operation of the website.</p> <p>In relation to sanctions, these need to be proportionate, evidence-based and appealable. If a business or user on a platform is found to have used fake reviews and the evidence has been provided, the maximum sanction available to the platform should be the removal of the listing in question in the first instance, with the removal of other listings being dependent on persistent breaches with no evidence of remedial action. It will be important to lay down guidelines on the scale that would</p>

	<p>warrant any sanction and what safeguards need to be in place for the affected business or user.</p> <p>There may be strong competitive and/or commercial interests and tensions at play between a platform and the businesses or users using the platform. The platform may have significant market power as a gatekeeper to the consumer. A platform may seek to use sanctions as a competitive weapon to encourage acceptance of its terms or it may be a direct competitor and seek to prefer its own products over other comparable products on its site. This underlines the importance of guidance and safeguards to ensure any sanctions are for genuine reasons, proportionate and evidence-based, with prompt, effective processes for appeal.</p>
36	<p><i>Do you agree that some traders should also be expected to:</i></p> <p>a) <i>have a process for assessing the risk that fake reviews will appear on their website;</i></p> <p>b) <i>a reporting mechanism that allows people to report suspicious activity; and</i></p> <p>c) <i>undertake regular evaluation of the effectiveness of these systems?</i></p> <p>Yes, we believe those traders where reviews play a significant role in informing consumers and influencing the presentation of products on a site should have processes for assessing risk.</p> <p>Yes, we also believe that a reporting mechanism is essential, both for the use of consumers and for affected businesses whose competitiveness may be harmed by fake reviews. Both should have equal influence, weight and priority on the basis that there is a common goal, the removal of fake reviews and of their influence on the site.</p> <p>Regular evaluation of the effectiveness of systems relating to fake reviews is appropriate and we suggest that such evaluations should be made available to public enforcers on request to ensure they are working well.</p>
37	No response.
38	<p><i>Do you think that the definition of fake review should require a consumer to have bought or used the relevant product?</i></p> <p>On balance, we do not believe that the purchase of a product should be a requirement for a review. A product may be a gift for someone and this should not prevent the writing of a review by the recipient.</p> <p>In terms of whether a person has used the product, this presents significant evidentiary challenges for a trader or business, to the extent that to make this a requirement would be potentially onerous. We are not clear how a trader or business may take reasonable and proportionate steps to ensure the product has been used.</p> <p>Were a platform to require business users to provide evidence of use to secure a listing, this is likely to present a disproportionate barrier to trade, innovation and competition.</p>
39	<i>Do you agree with the policy on incentivised reviews above? Are there any forms of incentivisation that would not be covered by it?</i>

	<p>We agree that, where an incentive has been provided for a review, it is transparent that an incentive has been offered. We also agree that a person providing the review should not be influenced to leave a certain type of review.</p> <p>We question however whether it is necessary to declare the nature of the incentive with any review. This would risk being disproportionate and burdensome, with limited additional value being provided to the consumer. A company may offer a range of incentives for a review, including free product, a discount, entry into a draw and other mechanics. It should be sufficient to declare that an incentive has been offered / paid, without having to declare further detail.</p>
<p>40</p>	<p><i>Should the proposed new banned practices on fake reviews be subject to criminal liability? If so, which?</i></p> <p>With the resources of public enforcers so overstretched at present, we consider it prudent to keep criminal liability under review and not make such a provision now. It is something to consider once there is evidence of how effective any new regime proves to be.</p>
<p>41</p>	<p>No response.</p>
<p>42</p>	<p><i>Do any of the banned practices require updating or clarifying? If yes please elaborate which one, what in your view needs changed and why.</i></p> <p>Paragraph 14 in Schedule 18 requires updating to reflect more accurately how shoppers are misled by packaging designs that mimic those of familiar branded products. The practice misleads consumers into buying products they did not intend to on the basis of false assumptions, and to pay more than necessary as a result. This paragraph currently replicates Paragraph 13 in Schedule 1 of the CPRs.</p> <p>The practice of packaging consumer products to mislead shoppers into making connections with familiar brands and to influence their buying behaviour continues to be a feature of the UK consumer goods market, notably in grocery. Recent examples can be found here, along with a summary of evidence on the deception.</p> <div data-bbox="354 1301 1345 1771" data-label="Image"> </div> <p>Since the introduction of the CPRs, advances have been made in understanding how shoppers shop, especially in supermarkets where attention levels are low and decisions are made fast, using System 1 thinking, or even subconsciously. Dark nudges have been identified as potentially problematic in the online world and parasitic packaging is a close relation in the bricks-and-mortar world. It performs a</p>

	<p>similar function to fake reviews in making unknown products artificially more attractive than they would otherwise be. The products in parasitic packaging look familiar and are more trusted as a result, boosting sales for the perpetrator and allowing higher prices to be charged than would otherwise be possible.</p> <p>A rewording of Paragraph 14 would reflect more accurately the deception of shoppers that is actually taking place. We propose:</p> <p style="padding-left: 40px;">Promoting a product similar to a product made by a particular manufacturer in such a manner as deliberately to mislead the consumer into believing that the product is made by that same manufacturer when it is not <i>or in a manner that is likely to mislead the consumer into believing that the product has the same specifications and/or has characteristics that are the equivalent of a product made by a particular manufacturer when it does not.</i> [copy added]</p> <p>The significant additional concern relates to the lack of enforcement in this area. This has led to a lack of any credible jeopardy for those seeking to mislead shoppers in this way. There has been one successful enforcement action, by Trading Standards in 2008, fifteen years ago. There has been no enforcement by the CMA or its predecessor. With resources for public enforcement continuing to be severely overstretched, there is a strong case for granting affected companies civil enforcement powers in this specific area.</p> <p>Strengthening enforcement in this way give effective protection for consumers as originally intended and support affected businesses by promoting fair competition. Sanctions should not go further than requiring the products in misleadingly similar packaging to be repackaged so as not to mislead. This would safeguard shopper choice and strengthen competition as this would focus on quality, innovation, reputation and price, rather than on price alone (as is the case where products are misleadingly presented as the same).</p>
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Online platforms

44	<p><i>Which consumer harms are particularly prevalent and/or detrimental on online platforms?</i></p> <p>We support the description of “professional diligence” as a requirement for traders to act with reasonable skill and care, commensurate with honest market practice and the general principle of good faith in their field of activity.</p> <p>There are three practices we wish to highlight</p> <p><i>Substitute selling</i></p> <p>This practice involves online sellers ‘tagging onto’ an existing brand listing whilst selling a substitute, rather than the advertised, product. The seller is taking advantage of the higher ranking of an established product to sell an inferior, generic or imitation product. It is making a misrepresentation to the shopper that it is offering the genuine branded item at a cheaper price.</p> <p><i>Sale of stolen products</i></p> <p>Incidents are being reported of products shoplifted from high street retailers being listed by third party sellers on platforms. The shopper believes mistakenly that they are purchasing legitimate products at a discounted price.</p> <p><i>The sale of counterfeit products</i></p>
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	<p>The sale of counterfeits continues to be a concern on various e-commerce platforms and is a global problem. While some platforms have taken important measures to combat such sales, it is a challenge to eliminate the problem due to the large number of sellers and listings. Continued strengthening of deterrence and improvement in monitoring and reporting mechanisms are required to continue to tackle such sales that exploit shoppers, may endanger health, fund organised crime and harm legitimate businesses.</p> <p>Such practices run counter to the standard of professional diligence.</p>
45	<p><i>What do you understand the requirements of professional diligence to require in practice from online platforms?</i></p> <p>The requirements would include....</p> <ul style="list-style-type: none"> – Know Your Business Customer – platforms should know who is using their platform, in terms of name, address and contact details, with verification that information is correct. Such information should be made available to public enforcers and to brand owners on request when they are investigating legitimately IP infringement and other unlawful activity; – Reporting processes – available both to consumers and to businesses to report unlawful activity on the platform. Collaboration to address, take-down or otherwise resolve such activity with affected businesses in a timely fashion, along with effective two-way communication, would enhance levels of consumer protection and safety; – IP protection – effective, timely measures need to be in place to protect the IP rights of businesses using the platform. These would include reporting mechanisms, intelligence sharing and take-down procedures, supported by performance data and standards and effective two-way communication; – Transparent terms of business – available to everyone using the platform so rules, fees and dispute resolution procedures are understood; – Fair and lawful dealing – a commitment to abide by relevant consumer protection and contract laws, for example. This would relate to consumers and also to businesses and users of the platform; – Data security – Collaboration with authorities <p>This is not an exhaustive list.</p>
46	<p><i>Are you aware of any examples of where the requirements of professional diligence have hampered innovation in the online platforms sector?</i></p> <p>No response.</p>
47	<p><i>Are there particular practices of online platforms where the application of the professional diligence requirements is uncertain?</i></p> <p>No response.</p>
48	<p><i>How should best practice for complying with the requirements of professional diligence for online platforms be set out and communicated?</i></p> <p>While we have no specific suggestions on how best practice relating to professional diligence should be set out and communicated, we believe the means should be:</p> <ul style="list-style-type: none"> – authoritative – represent a firm commitment, so not voluntary – include accountability measures and reporting

	<p>– include sanctions.</p> <p>Where a platform is designated as having strategic market status by the CMA, it is likely to be appropriate that provisions on professional diligence are included in a binding code of practice with accompanying credible monitoring and enforcement.</p>
49	<p><i>Is the current definition of professional diligence appropriate for regulating online platforms? If not, how do you consider it could be improved?</i></p> <p>The definition would be enhanced were platforms required “to act <i>promptly and</i> with reasonable skill and care” [<i>italics</i> added]. The longer certain practices persist on the market, the more harm is caused.</p>

Further issues

	No response.
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Online Interface Orders

	No response.
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Annex – Membership list

