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FRANCE

Significant Imbalance: a final decision in the Pizza Sprint and Domino's Pizza Case

Court of cassation, Commercial Chamber, 28 February 2024, No. 22-10314.

Following an investigation between 2013 and 2016 in the fast-food franchise sector, the General Direction for Competition, Consumer Affairs and Fraud Control (in French "DGCCRF") took legal action against Pizza Sprint and Domino's Pizza France (which acquired Pizza Sprint in 2016), alleging that the franchise agreements contained significantly imbalanced clauses.

The ruling rendered by the Court of Cassation on February 28, 2024, which has upheld the entirety of the Paris Court of Appeal's ruling dated January 5, 2022, was eagerly awaited, given the high stakes involved for franchisors.

The Court of Cassation had been asked to rule on several issues relating to (i) the admissibility of the Minister's action, (ii) the methods used by the lower courts to assess whether the practices constituted a submission to significant imbalance, and (iii) who was liable for the practices at stake.

Turning first to the admissibility of the Minister's action, the Court of Cassation noted that this action was not "*subject to any specific rules*" and thus concluded that the five-year statute of limitations set out in article 2224 of the French Civil Code was applicable and that the starting point of the statute of limitations runs from the discovery of the significantly imbalanced clause or practice, which corresponds to the first act of investigation.

This position is disputable, as it means that as long as the Minister is not investigating, the five-year statute of limitations does not begin to run. Admittedly, however, the Minister's action is subject to the maximum time limit set out in article 2232 of the Civil Code, which is 20 years as from the event giving rise to the claim, but this time limit is particularly long and equivalent to that applied to crimes under criminal law...

The Court of Cassation then specified that "*the conclusion of a settlement agreement between business partners does not have the effect of depriving the Minister of his powers under article L.442-6, III, now article L.442-4 of the French Commercial Code*." This solution is logical, given the independent nature of the Minister's action.

The Court of Cassation further ruled on the Paris Court of Appeal's assessment of the condition of submission to a significant imbalance. The Court of Cassation followed the reasoning of the Paris Court of Appeal and ruled that the reputation and simplicity of the Pizza Sprint concept combined with the fact that the franchise agreements were not negotiated by the franchisees in practice and all contained the same clauses was sufficient to characterise the franchisees' submission by the franchisor.

In view of this decision, it is likely that Courts will almost always consider that the franchisor is able to submit its franchisees. This is hardly consistent with the case law of the Paris Court of Appeal, which had admitted as a criterion for characterising submission, the existence, or lack of existence, of alternative solutions for the co-contractor, at the date when the contract was entered into (see, for example, Paris Court of Appeal, June 7, 2023, No. 22/19733; Paris Court of Appeal, February 23, 2022, No. 20/07566; Court of Cassation, commercial chamber, April 26, 2017, no. 15-27865).

Finally, on the assessment of the existence of a significant imbalance, the Court of Cassation made an important clarification about transfer clauses. The Pizza Sprint contracts contained a non-reciprocal intuitu personae clause which (i) required the franchisee to inform the franchisor of any project "having an impact" on the distribution of the franchisee's share capital or that of its main shareholder, and on the identity of its effective managers, and (ii) authorised the franchisor to terminate the contract early if it did not authorise the evolution proposed by the franchisee.

Conversely, the assignment of the contract or changes in the franchisor's share capital were unrestricted, the franchisee having no right to oppose the transfer.

This clause had been annulled by the Paris Court of Appeal as being significantly imbalanced and the Court of Cassation dismissed the appeal against the Court of Appeal's decision but did specify that the latter had not "*confined itself to deducing the existence of a significant imbalance from the mere fact that the disputed clause did not provide for reciprocity.*"

In other words, the clause was rightfully annulled by the Court of Appeal not because it was not mutual, but because it was drafted in vague terms, not allowing the franchisee to know precisely when the franchisor was likely to terminate the contract.

Non-mutual transfer clauses (which grant the franchisor approval rights in the event of transfer by the franchisee, but not to the franchisee in the event of transfer by the franchisor) are therefore valid as long as they enable "the assessment of the nature and degree of the effect of the project on the franchisee's person or shareholders, and the likeliness to motivate, on the part of the franchisor, early termination of the contract."

The Court of Cassation's position is reassuring, as it allows to maintain the usual transfer clauses in franchise agreements, *provided they are drafted in a clear and reasonable manner.*

Finally, regarding responsibility for the practices, the Court of Cassation upheld the Paris Court of Appeal's decision to sentence Domino's Pizza France jointly with Pizza Sprint to pay the civil fine on the grounds that it had "*not ceased the practices in question*" when it took control of Pizza Sprint.

This is a surprising and severe decision, as it means that Domino's Pizza France is liable not only for the period after the acquisition, but also for the period prior to it.

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The French Competition Authority imposes a series of sanctions for restrictions of online sales and sales to professional customers

French Competition Authority, 23-D-12 of 11 December 2023; 23-D-13 of 19 December 2023; 24-D-02 of 6 February 2024.

In three decisions in a row rendered at the end of 2023 and the beginning of 2024, concerning a free distribution system (Mariage Frères), a selective distribution system (Rolex) and a franchise system (De Neuville), the French Competition Authority (hereafter the "ADLC") imposed a series of sanctions on the grounds that they had prevented their distributors from selling online (in the three decisions) and had restricted sales to professionals (in the Mariage Frères and De Neuville decisions).

Regarding restrictions on online sales, the ADLC criticised Mariage Frères and De Neuville for restricting, and Rolex for outright prohibiting, their distributors from selling online. Each of these companies argued that these practices were justified by the need to preserve the brand image and, for Rolex, to fight counterfeiting.

However, in line with the Pierre Fabre decision of the Court of Justice of the European Union (CJEU, October 13, 2014, C-439/09, Pierre Fabre Dermo-cosmétiques),

the ADLC reiterated in all three cases that the restrictions imposed on distributors regarding online sales must not have the indirect purpose of preventing the buyer's effective use of the internet, and that the need to obtain written agreement from the supplier was a restriction of competition by object.

It also held that the objective of preserving the brand image did not justify absolute bans, even in the case of luxury goods. In the Rolex case, the ADLC pointed out that the Rolex's main competitors did not impose such restrictions, demonstrating that a less restrictive approach was possible.

The ADLC noted that these practices had the effect of partitioning markets and restricting intrabrand competition, to the detriment of consumers and recalled that, regardless of the distribution system chosen (free, selective or franchise), the supplier/franchisor is not allowed to prevent its distributors from reselling online.

The ADLC also fined Mariage Frères for prohibiting its distributors from selling products to professional resellers, and De Neuville for limiting and canvassing sales to professional customers.

Mariage Frères reserved wholesale for itself and limited the commercial scope of its distributors to resale to consumers. Mariage Frères had not set up an exclusive distribution system, and the ban covered both active and passive sales. Generally, in so-called free distribution systems, it is possible to prohibit distributors from engaging in active sales to customers reserved exclusively for other distributors or for the supplier, but it is never permitted to prohibit passive sales, even when some customers are reserved.

In the De Neuville case, the franchisor allowed sales to professionals, but encouraged franchisees to develop their direct catchment area first, before prospecting other areas. In addition, De Neuville had introduced a code of conduct to preserve the harmony within the network, which, according to the ADLC, led to an allocation of customers.

The ADLC considered that these practices constituted per se restrictions of competition, thus not eligible for exemption.

These three ADLC decisions are a reminder of the strict stance (perhaps too strict, given the actual impact on the market) taken by European competition authorities, and in particular the ADLC, with regard to online resale and market partitioning.

However, franchisors are not totally helpless when it comes to Internet resale or to resale to professionals, since competition law recognises their right to protect the brand image as well as to preserve the homogeneity and coherence of the system.

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GERMANY

Beware of false self-employed persons, especially in franchising

In the rapidly changing world of work, the question of the social insurance obligation of pseudo self-employed individuals has garnered increased legal and social attention. The Federal Social Court (BSG) of Germany made important clarifications regarding the distinction between self-employment and dependent employment in a groundbreaking ruling on December 12, 2023, with far-reaching implications for labor market dynamics – and thus at the crossroads with franchising.

Key aspects of the BSG ruling

The BSG ruling (BSG, B 12 R 10/21 R) addresses the critical evaluation of entrepreneurial risk and cost absorption as decisive criteria for classifying an activity as self-employed. In the case under consideration, a physician working in a practice without assuming her own risk and remitting fixed shares of income was classified as dependent. This ruling emphasizes that it is **not the contractual designation but the actual working conditions** that decide about the social security assessment.

Deeper insights and implications of the ruling

The decision of the BSG underscores the need for a careful examination of contractual relationships concerning the actual exercise of entrepreneurial freedoms and risks. Legal guidelines make it clear that a formally self-employed registration is not sufficient to circumvent social security obligations if the working conditions suggest dependent employment.

Comparative perspectives: Other court decisions

A contrasting ruling by the Regional Social Court Berlin-Brandenburg (judgment of January 26, 2024 - L 1 BA 21/21) demonstrates the diversity of legal assessments in similar cases. In this instance, the self-employment of a parcel delivery driver was confirmed, who employed his own workers and invested in business equipment, representing a clear entrepreneurial risk. This decision underscores the importance of individually assessing each case, taking into account all relevant work and organizational aspects.

Future developments and challenges

The ongoing adaptation of jurisprudence to changing employment relationships poses a challenge to the social insurance system. Technological change and the increase in flexible forms of work lead to more complex assessments of employment relationships. Companies and freelancers are increasingly required to be aware of this dynamism and to legally safeguard themselves accordingly.

Conclusion

The ruling of the BSG and related decisions provide fundamental guidance for assessing pseudo self-employment and are crucial for safeguarding the rights of employees as well as the responsibilities of companies under German social security laws. Addressing these issues will continue to have a significant impact on the legal framework for employment relationships and requires continuous monitoring and adaptation by all parties involved. This goes especially for sole entrepreneurs that act as franchisees. Registering as a business will serve as a first indication that said person is carrying out a self-employed activity. Additionally, both the respective contract and the concrete relationship must ensure that the self-employed distribution intermediary (especially: the franchisee) retains its entrepreneurial independence. Or, as German law on commercial agents puts it: A commercial agent acts independently if said agent organises the working time and activities freely, based both on the contractual framework and tasks (§ 84(1)2 German Commercial Code). The same goes for other types of distribution partners, in particular distributors and franchisees.

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POLAND

Challenging the genuine character of the agency agreement in a resale price maintenance case

Recent enforcement action by the Polish competition authority shed light on the complexities surrounding resale price maintenance within distribution chains. The latest decision, involving Przedsiębiorstwo Wielobranżowe Atex ("**Atex**"), underscores the pivotal role of risk allocation in determining the legality of agency relationships. As businesses navigate the intricacies of competition law, the case serves as a stark reminder of the need for vigilance when employing distribution models involving the agency relationship. Understanding these nuances is paramount as companies strive to maintain compliance and competitiveness in today's market landscape.

Agency relationship under competition law

In general, undertakings operating within distribution chains must have the freedom to set the prices they apply for sales. Obligations imposed on distributors to apply fixed or minimum prices may be regarded as resale price maintenance and, thus, violate the prohibition of agreements whose object or effect is to restrict competition (Article 101 of the Treaty on the Functioning of the European Union and Article 6 of the Polish Act of 16 February 2007 on Competition and Consumer Protection).

However, the abovementioned prohibition applies to agreements between two or more undertakings. Under certain circumstances, the relationship between an agent and its principal may be characterised as one in which the agent no longer acts as an independent economic operator (separate undertaking) and, therefore, such relationships may fall outside of Article 101 TFEU (and its local equivalent).

According to the European Commission's guidelines on vertical restraints (2022/C 248/01), this may apply where the agent bears no significant financial or commercial risks in relation to the contracts concluded or negotiated on behalf of the principal. According to the Commission, a genuine agent should not bear the costs of e.g., transporting the goods, financing the stock, investment in sales promotion, etc. Although the European Commission's guidelines refer to EU competition law, given that Polish substantive competition law mirrors to a large extent EU competition law, in practice they are applied quite frequently to practices of undertakings active in Poland.

Recent decision of the Polish competition authority

The latest decision of the Polish competition authority shows that merely labeling a given relationship as an agency is not sufficient grounds for excluding it from the scope of competition law requirements. Even though the public version of the decision has not yet been published, it may already be considered a warning sign to all undertakings willing to use the agency model in distributing products.

At the end of February, the Polish competition authority announced that a fine of over PLN 2.5 million (approx. EUR 580,000) had been imposed on Atex, an undertaking engaged in the trade of coal and related products. Atex allegedly imposed coal sales prices on its trading partners, preventing them from selling coal at lower prices.

Atex considered its trading partners to be agents selling products on its behalf, and therefore, the relationships between Atex and its partners were deemed to be outside the scope of the prohibition on anticompetitive agreements. However, the authority disputed this approach, determining that they were, in fact, independent entities entitled to set prices freely. The authority examined the relationship between Atex and its partners by assessing the economic and financial risks borne by the latter. wwwwwwwww

According to the press release, it appears that Atex's partners bore the costs and economic risks associated with, among other things, maintaining product stocks, insurance, and transportation costs.

Therefore, restrictions on setting prices by the alleged agents have been considered as unlawful resale price maintenance.

This decision of the Polish competition authority underlines the importance of analysis of risk allocation in the agent-principal relationship. It also underscores that undertakings willing to employ the agency model of distribution must do so with caution.

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PORTUGAL

The application of Article 33(1)(c) of Decree-Law no 178/86, of 3 July (which regulates the clientele compensation on agency agreements) to commercial concession agreements

I. Introduction

The Portuguese courts and doctrine have defined the commercial concession agreement as a legally innominate contract which, in general terms, can be described as one in which a grantor - the principal - undertakes to sell to another - the concessionaire - with the latter, in return, being obliged to buy from the former, certain products for resale, in its own name and on its behalf, as well as to fulfil some duties arising from its integration into the principal's distribution network.

Its purpose is to create and regulate a legal relationship of stable and lasting collaboration between the parties, the execution of which translates into the future conclusion of successive purchase and sale contracts between the parties.

The concessionaire owns the products that it distributes, and its economic return is the difference between the price at which it buys the products and the price at which it resells them.

The legal structure of the commercial concession agreement renders it an atypical nature that does not fit into any contract legally provided for under Portuguese law, and, therefore, does not have its own regulation, despite its social typicality.

As a result, the Portuguese courts have been applying the regulations applicable to agency contracts to these types of agreements, specifically the Decree-Law no. 178/86, of 3 July. However, such application has not been without controversy, and, in some cases, contradictory decisions have been handed down by the same higher courts.

One of the most intense discussions concerned the application of article 33, no 1, c), which states that, for the agent to be entitled to a clientele compensation, he must prove that, with the termination of the agency agreement, he no longer receives any remuneration for the contracts negotiated or concluded.

II. The ruling no. 6/2019 of the Portuguese Supreme Court of Justice

Under article 33, no. 1, of the Decree-Law no. 178/86, of 3 July, the agent is entitled, upon termination of the agency agreement, to a clientele compensation, if all the following requirements are met:

a) the agent has acquired new clients for the principal or has significantly increased the turnover with existing clients;

b) the principal is set to benefit considerably from the agent's activity after the termination
c) of the agreement;

the agent ceases to receive any remuneration for contracts negotiated or concluded, after the termination of the agreement, regarding the clients referred to in paragraph a).

The analogical application of the Decree-Law no. 178/86, of 3 July, to commercial concession agreements is being decided on the grounds that the latter involves an activity and a set of tasks similar to those of the agency, and that the contracting parties are similarly bound by a stable and lasting relationship, insofar as that are themselves to be considered by the activity they carry out as an important factor in attracting clients.

The divergence concerns the requirements that must be met. Thus, while most of the Portuguese Supreme Court of Justice rulings and some of the other court rulings indicate that the award of clientele compensation depends solely on the cumulative fulfilment of paragraphs a) and b) of article 33, no. 1, of the Decree-Law, another section of the court rulings indicate that the fulfilment of paragraph c) must also be verified.

With two dissenting votes, the Portuguese Supreme Court put an end to the debate, ruling that any profits made by the ex-concessionaire because of the clientele he acquired and retained are relevant for the purposes of paragraph c), which is applicable to the commercial concession agreement with the necessary adaptations. This means that awarding clientele compensation, in the event of the termination of the commercial concession agreement, has since become more difficult and demanding. According to the Supreme Court's interpretation:

- The term "remuneration" is to be understood as revenues or profits that the concessionaire earns from doing business with the resellers;

- The ex-concessionaire must cease to receive any compensation for contracts concluded after the end of the commercial concession agreement and cease to receive any income from its former activity;

- It is up to the ex-concessionaire to prove that it ceased to receive any income from his previous activity as a concessionaire.

III. Conclusion

The decision described above has helped to overcome doctrinal and jurisprudential differences, by tightening the requirements for recognizing the right to clientele compensation in the event of termination of the commercial concession contract.

In order to obtain compensation, the ex-concessionaire must, in relation to article 33(1)(c), allege and prove that it no longer receives any remuneration for the contracts concluded, after the termination of the commercial concession contract, with the clients he acquired for the grantor. The clientele compensation is only due, in addition to verification of the other requirements, when it demonstrates that it no longer receives any income from its former activity.

Lisbon, 8th April 2024.

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SPAIN

Marketplaces, trademarks and possible liabilities

There is no doubt that the distribution of products through marketplaces is a growing practice.

As the reader of this article already knows, an event has recently occurred that directly affects marketplaces (among other protagonists): we are referring, specifically, to the entry into force on February, the 17th, 2024, of the Digital Service Act (hereinafter "**DSA**")[1].

The purpose of this article, given the wide variety of points covered by the aforementioned regulation, will focus on the possible liabilities of both the distributors and the marketplaces in the commercialization of products without the authorization of the trademark owners.

Let's take as starting point that, in Spain, the DSA did not mean a revolution regarding the liability of marketplaces, but rather an evolution of the regulation provided for in Spanish Law 34/2002 of 11 July 2002 on Services of the Information Society (hereinafter "LSSI")[2].

In any case, both the DSA and the LSSI make the liability of the marketplaces depend on their effective knowledge of and/or their diligence against "*illegal activities or illicit contents*".

So, going back to the possible liabilities of both the distributors and the marketplaces in the commercialization of products without the authorization of the trademark owners, are such practice always considered as an "illegal activity".

The registration of a trademark shall confer on the proprietor exclusive rights therein. Furthermore, the proprietor of a trademark shall be entitled to prevent all third parties not having his/her/its consent from using his/her/its trademark in the course of trade.[3]

This being so, a priori, the distribution of products without the consent of the trademark holder through a marketplace (or through any other way) would be considered as a trademark infringement and, consequently, as an "illegal activity" under the DSA and the LSSI.

However, there is an exception. According to the current regulation on trademarks[4], a trademark shall not entitle the proprietor to prohibit its use in relation to goods which have been put on the market in the European Economic Area under that trademark by the proprietor or with his/her/its consent (exhaustion of the rights conferred by a trademark).[5]

But the current regulation also establishes an exception to the exception: the exhaustion of the rights conferred by a trademark shall not apply where there exist legitimate reasons for the proprietor to oppose further commercialisation of the goods.

The problem is to know the exact meaning of the concept "legitimate reasons". The regulation mentions only two cases: where the condition of the goods is changed or impaired after they have been put on the market. Fortunately, the caselaw has recognized other possibilities: where the circumstances of the commercialization injure the prestige of the trademark, where the commercialization suggests the existence of an economic link with the owner of the trademark, etc.

In conclusion and for the best understanding of the reader of this article:

	Liability of the distributor (application of the regulation on trademarks)	Possible liability of the marketplace provided that all the requirements are met (application of the DSA and/or LSSI)
Distribution through a marketplace of fake products.	Yes	Yes
Distribution through a marketplace of "grey products" (parallel imports)	Yes	Yes
Distribution through a marketplace of original and legitimate products without the authorisation of the trademark holder when such products are not "grey products"	No, if there are no legitimate reasons for the proprietor to oppose further commercialisation of the goods.	No, if there are no legitimate reasons for the proprietor to oppose further commercialisation of the goods.

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THE NETHERLANDS

The franchisee's right to consent under the Franchise Act

The goal of the Dutch Franchise Act is to strengthen the franchisee's situation. Amongst others, this is done by the introduction of an obligation for the franchisor to obtain the prior consent of the franchisee in the event of an intended change to the franchise formula that could potentially have a monetary impact on the franchisee. This right of the franchisee, can form an obstacle for the franchisor to adjust its franchise formula. This article briefly sets out (1) when the consent of the franchisee for a change in the franchise formula is required, and (2) best practices for the franchisor as how to deal with the consent requirement under the Dutch Franchise Act.

Pursuant to Article 7:911 (2)(a) of the Dutch Civil Code (**DCC**), a franchise formula exists in case of an operational, commercial and organizational formula for the production or sale of goods or the provision of services, which determines a uniform identity and appearance of the franchise enterprises within the chain where this formula is applied. This must in any case involve 'a trademark, design or trade name, house style or drawing', and also know-how, to which certain strict requirements apply. This is a broad definition, which leaves a lot of room for interpretation.

Changes to the franchise formula for which prior written consent of the franchisee needs to be obtained, include changes in products, markets and changes regarding certain franchise related strategies. More generally, prior consent will be required for all changes that have a potential monetary impact on the franchisee, e.g. with respect to investments the franchisee is required to make.

When intending to implement a change in the franchise agreement, pursuant to article 6:916 DCC, the franchisor has the obligation to inform the franchisee. The franchisee will then – pursuant to Article 7:921 DCC - have the right to refuse the proposed change in the event of a negative impact on the franchisee.

To avoid having to obtain the prior consent of the franchisee for any and all changes to the franchise formula, the franchisor can introduce a clause in the franchise agreement, pursuant to which the franchisor has the right to amend the agreement unilaterally. The right to unilaterally amend the franchise agreement is limited, as pursuant to the Franchise Act, the right to unilaterally amend the agreement must be capped to a maximum level of potential negative exposure that must be foreseeable for the franchisee (a threshold value). Therefore, up to a certain maximum threshold, the franchisor will in such event have the right to unilaterally change the franchise formula without having to obtain the prior written consent of the franchisee.

If no such clause is included in the franchise agreement, the franchisor will require the prior permission of the franchisee for every change to the franchise formula.

The Dutch Franchise Act does not provide guidelines on the determination of what would be a fair threshold value. This leaves a lot of room to the parties to determine these thresholds themselves. The parties can also decide to use different threshold values for different potential changes to the franchise formula, enabling the franchisor to – for example - maintain a higher threshold value for the offtake obligation and a different value for the marketing budget. We would recommend the franchisor however to use both a general and a specific threshold. By doing this, the specific items are covered by the specific thresholds, whereas the general threshold could serve as a safety net for changes to the franchise formula that were not foreseen by the franchisor.

With the inclusion of a threshold value, determinability must also be met. Therefore, it may be useful to associate a time frame with the value and determine how the franchisor can utilize the space up to the threshold value, in order to make it more determinable when and how the threshold value is met.

One last word of advice for the franchisor when using thresholds in its franchise agreements, is to use 'reasonable' thresholds, that do justice to the franchise relationship between the parties. The obligation to use reasonable thresholds follows from the general obligation of the franchisor under Article 7:912 DCC to act in accordance with good franchising practices. Introducing unreasonable thresholds could result in a breach of the franchisor of Article 7:912 DCC, which could lead to termination of the franchise agreement.

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UNITED KINGDOM

Government confirms plans for further consumer protection changes

What's the issue?

In September 2023, The government published a 'Consultation on Improving Price Transparency and Product Information for Consumers' and a report on 'Estimating the prevalence and impact of online drip pricing'.

The consultation set out proposed wording for a ban on fake online reviews which would be added to the list of automatically unfair commercial practices in the Digital Markets Competition and Consumers (DMCC) Bill. It also looked at:

- display of pricing information;

- hidden fees and drip pricing;

- how professional diligence requirements should be interpreted for online platforms and whether the term should be redefined with the aim of ensuring online platforms and consumers have greater clarity over their respective rights and responsibilities;

- whether enforcers other than the CMA should be able to apply to court for an online interface order.

In addition, there were questions on the suitability of the current list of 31 automatically unfair commercial practices which are intended to be imported into the DMCC from the outgoing Consumer Protection from Unfair Trading Regulations (CPUT Regs). See here for more.

What's the development?

The Department for Business and Trade published its response to the consultation on 24 January 2024.

Following analysis of the responses, the government's plans now include:

- Updating the Price Marking Order largely in line with the CMA's recommendations, including to ensure communication of unit prices (excluding deposits), and legibility criteria. The exemption for small shops will be retained.

- Addressing drip pricing by amending the DMCC Bill to include provisions similar to those in the CPUT Regs. Traders will be banned from displaying headline prices which do not incorporate any mandatory fees or disclose variable mandatory fees and how they will be calculated.

- The DMCC Bill will be amended to add submitting, commissioning, incentivising, publishing or providing access to fake reviews to the list of banned practices. The wording will be as proposed in the consultation.

- The government will publish guidance for online platforms on their professional due diligence obligations under the DMCC Bill (currently under CPUT Regs).

- Additional public enforcers including the FCA and ICO will be able to apply for online interface orders but private enforcers (currently Which?) will not be permitted to do so.

- There will not be an extension to consumers' private rights of redress for misleading omissions, breaches of professional due diligence, or automatically unfair commercial practices.

Timelines were not included.

What does this mean for you?

This consultation formed part of the UK government's review of consumer protection law following Brexit. Among other things, the DMCC Bill will repeal the CPUT Regulations but the government felt more research was needed in some areas.

Provision to make further changes have been embedded into the Bill through powers given to the Secretary of State, including to amend the list of automatically unfair commercial practices. Interestingly, the wording around fake online reviews was first published alongside the DMCC Bill. The Bill has completed its progress through the House of Lords Committee stage and will shortly return to the House of Commons. It is unclear whether or not the government will now put the fake online review changes into the Bill before it passes given there is still scope to amend it. As part of the overall aim of the DMCC Bill is to consolidate and simplify consumer protection legislation, it would be helpful to have the conclusions from the consultation included on the face of the final legislation.

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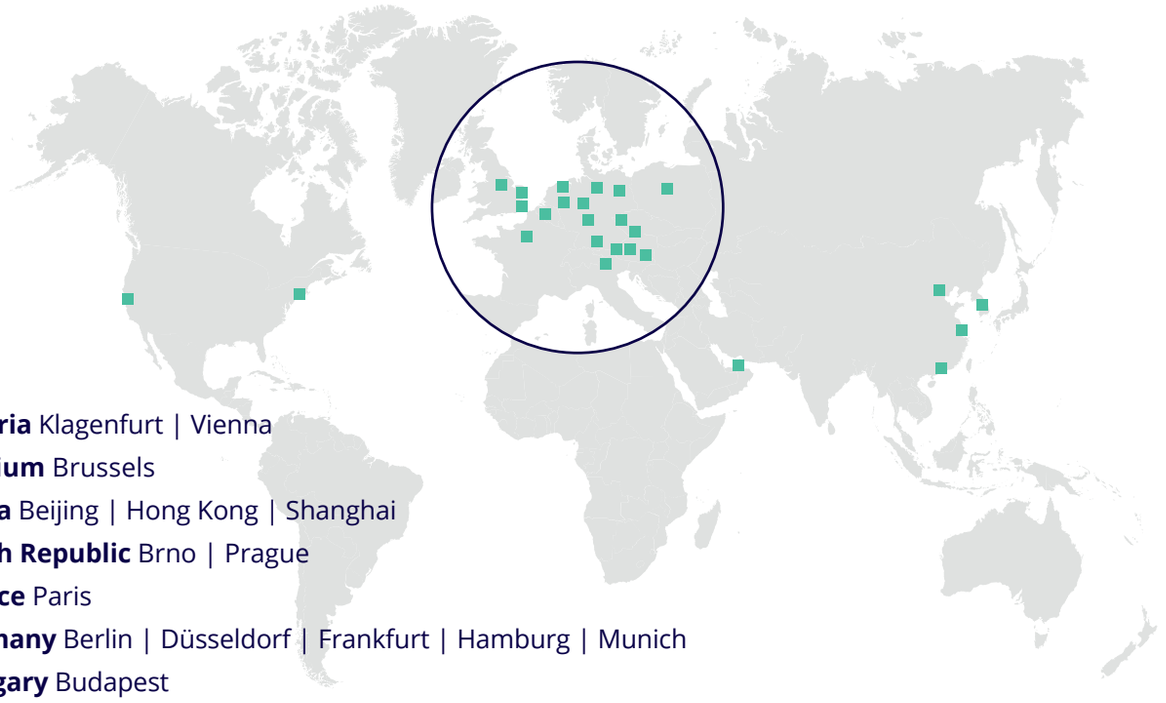

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