amazon uk

Reforming competition and consumer policy: Amazon response to CP488

October 2021

Introduction

Amazon welcomes the opportunity to respond to this consultation. We agree with the government that this is a timely moment to review competition and consumer policy, because:

1. The economic recovery from the COVID-19 pandemic is a natural catalyst to challenge existing policy in an effort to build back better. Governments around the world are conducting similar exercises. The UK government is right to consider how competition and consumer policy can support that effort.

2. The UK has an added, unique opportunity as it defines a distinct UK model for regulation. It is a logical time to consider what aspects of existing regulation work well, and how the UK might use regulatory flexibility to secure advantages for consumers and the wider economy.

As the government looks to capitalise on that opportunity, we welcome the strong focus on ensuring UK consumers continue to benefit from open, well-functioning markets. We share the government's desire to ensure that competition and consumer policy prioritises **consumer welfare**, **supports pro-consumer innovation** and **unlocks economic growth across the UK**. Indeed, Amazon has been supporting those objectives since we first entered the UK:

- **Amazon champions consumer welfare**, striving to be the world's most customer-centric company. At the heart of that is providing the outcomes – on choice, price and convenience – that customers value. For instance, by opening our store (amazon.co.uk) and fulfilment network to third parties, we are able to vastly expand the choice available to customers, which helps keep prices low and service standards high. We work hard every day to earn, and retain, customer trust. That includes robustly tackling issues that might jeopardise it, such as fake reviews.

- **Amazon continually innovates to benefit customers**. Amazon's history is one of continual innovation. We always start with the customer and work back to find ways of improving the customer experience. Examples include using world-leading robotics to cut the time and cost of home delivery, as well as launching grocery stores with 'Just Walk Out' technology[1], which allow customers to leave without scanning products or visiting a till point. The UK has traditionally been an attractive market to trial and scale such innovation, with a regulatory framework that is evidence-based, predictable and proportionate. We welcome the government's stated desire to retain that.

- **Amazon's success has directly supported economic growth across the UK**. We've invested more than £32 billion since 2010, adding £36 billion in value added GDP and creating more than 55,000 permanent positions.[2] That growth is spread regionally. We're proud to be a leading employer in many of the regions the government is committed to levelling up. We agree with the government that competition underpins the improved productivity necessary to deliver the government's levelling up agenda.

This response sets out how the above objectives can best be supported by competition and consumer policy. We have not addressed every question the government consulted on. Instead, we have focussed our response on six areas which are particularly important to Amazon and where we hope our perspective may be useful to the government. These are:

1. **Amazon does not believe that significant changes to the existing market study and investigation processes are required and considers that the proposed amends risk undermining the effectiveness of the regime.** The existing regime is well-respected and operates effectively. Whilst some minor amendments (such as the ability to accept binding commitments at any stage in the process) may be advantageous, others, such as early imposition of remedies or interim measures, could compromise effective, evidence-led decision making and reduce stability and predictability for consumers and businesses.

[1] https://www.amazon.co.uk/b?node=21962024031&ref=UK_OTR_ALL_JAD_OTH_PDSEA_0439529
[2] https://blog.aboutamazon.co.uk/jobs-and-investment/2020-amazons-economic-impact-in-the-uk

2. **Amazon agrees that the UK's merger control process can be improved**. Amazon agrees that it may be appropriate to add a new limb to the jurisdictional test for review of mergers by the CMA so that it captures transactions where, for example, concerns may be purely vertical. However, Amazon notes that in order to ensure proportionality and avoid a deluge of notifications, this limb must be designed so that it captures only transactions in relation to which there is a genuine prospect of an impact on UK customers or competition.
3. **Amazon does not consider that the jurisdictional requirements of the Chapter I and Chapter II prohibitions should be amended.** Today, the CMA must always establish an effect on trade in a UK market to establish jurisdiction. Changing that would not benefit consumers, and would undermine the UK's hard-won reputation for proportionate regulation.
4. **Amazon believes that there should be full appeal rights for Competition Act investigations.** Regulators' decisions can have far-reaching impacts on businesses, customers and competition. Amazon therefore favours strong and effective rights of appeal. Where the stakes are high, merits review which looks not just at how a decision was made but also at the outcome, is a better, faster and more flexible tool than judicial review.
5. **Amazon supports the government's desire to tackle fake reviews** (reviews offering inaccurate reflections on a product or service). Such reviews mislead customers, damage customer trust and distort fair competition. Amazon agrees with the government that this work should not undermine the scope to encourage and, when done in a reasonably way, incentivise consumers to leave genuine reviews, which can help consumers make more informed decisions and help SMEs grow their business.
6. **Amazon's view is that any changes to consumer law enforcement must retain sufficient protections for businesses**. It is of upmost importance that there is full and adequate scrutiny of any decision made by the CMA, to ensure traders have a fair and due process.

1. Amazon supports the existing market study and investigation process, which is fair and effective *(Questions 4, 5, 6 and 7)*

Amazon does not believe that significant changes to the existing market study and investigation processes are required and considers that the proposed amends risk undermining the effectiveness of the regime.

The current market inquiries regime works well and is an effective tool in understanding and tackling potential concerns about the functioning of specific sectors. This regime is highly regarded both in the UK and internationally. Amazon agrees with the government that whilst there are some areas where the process for market studies and investigations can be made more efficient, we do not consider that some of the more far-reaching changes proposed in the consultation are either necessary or desirable. In particular, Amazon does not support granting the CMA the power to impose remedies at the end of a market study, replacing the current system with a single stage market inquiry process or enabling the use of interim measures in market inquiries. We support the proposal that the CMA should be able to accept binding commitments at any stage in the market inquiry process. We elaborate on the reasons behind our position below.

Proposal 1: Imposition of remedies at the end of a market study process

It would be inappropriate to allow the imposition of remedies at the end of a market study process. Market studies are only twelve months in duration (including information gathering, analysis and preparation of the decision) and, given that they cover entire sectors, are necessarily wide in scope. Moreover, the purpose of a market study is not to assess potential remedies, but to examine the '*causes of why particular markets may not be working well, taking an overview of regulatory and other economic drivers and patterns of consumer and business behaviour*'.[3] As such, they are not well suited to identifying, or assessing the potential impact of, remedies, which can be complex and far-reaching, and need to be specific.

Given the above, it is clear that a market study process is an inappropriate mechanism through which to investigate in sufficient depth any potential adverse effect on competition, or the likely impact of any proposed remedies. Speed should never come at the cost of ensuring that decisions are 'right' in that they are evidence based, analytically robust and achieve the best possible outcomes for consumers. Indeed, Amazon considers that it would weaken the UK's world-class regime to undermine the link between strong and expert analysis by the CMA, and the use of its powers. In particular, swift imposition of remedies, absent robust, in-depth analysis, could lead to significant over-enforcement, with the regime being used in cases where the grounds for intervention are not clear and where alternative, less draconian, options have not been properly considered.

If, however, remedies were to be imposed at the end of a market study:

- Amazon agrees with the government that it would be inappropriate for these to include structural remedies, such as the sale of assets or ownership separation. Such remedies have significant and wide-ranging implications and it cannot be reasonable for such measures to be imposed without a thorough investigation, which is not possible within a 12-month timeframe. It should however remain open to businesses to offer such remedies in lieu of a reference to a market investigation if they considered it appropriate in the circumstances.
- Amazon considers that it would be necessary to extend the statutory timetable for an additional six months to allow the subject of the market study to make representations in relation to both the adverse effect identified and the proposed remedies, as well as to propose less interventionist steps to remedy concerns.
- Amazon disagrees with the proposal in the consultation that the CMA board should act as the responsible decision maker when deciding whether to impose remedies. Such an approach would remove the valuable input and oversight from experienced decision-makers and dilute effective procedural safeguards. In addition, from a practical perspective, in contrast to a dedicated Panel, it is unlikely that the CMA board would have sufficient bandwidth to conduct the appropriate level of scrutiny in conducting this additional duty.

[3] *Market Studies and Market Investigations: Supplemental guidance on the CMA's approach*, paragraph 2.1.

Proposal 2: Single stage market inquiry tool

Amazon does not consider that it would be appropriate, or indeed resource saving, to replace the existing market study and market investigation system with a new single stage market inquiry tool. Market studies and market investigations have clearly differentiated purposes. The initial "screening" process of a market study means that the CMA is able to assess a market and any potential concerns without embarking on a two or three-year in-depth process. This enables proper prioritisation and direction of resources. While in theory a new "one stage" market inquiry tool would provide the flexibility to curtail an inquiry early if concerns were not identified, in practice is it likely that processes would take the full two-year statutory timeframe. This could result in a reduction of the number of sectors that the CMA is able to assess, and reduce overall efficiency.

In addition, Amazon is concerned that appointment of a Panel only after publication of provisional findings recommending the imposition of remedies (rather than at the commencement of a market investigation) would substantially weaken the important role of these independent decision makers and reduce opportunities for their valuable input. This would contribute to an overall dilution of effective oversight, thereby reducing incentives for robust and evidence-led decision making.

Comparison of the two proposals

We agree with the government that, if the two-step process is retained (as we consider it should be), it can be streamlined and refined. This could be done by removing the requirement to consult on a market investigation reference within the first six months of the market study and providing greater flexibility for the CMA to define a narrow, targeted scope for market investigations. These steps would address some of the timing and resource concerns identified in the consultation without compromising important oversight mechanisms (such as the role of the Panel) which could dilute the overall robustness and effectiveness of the regime.

Interim measures

It would be entirely inappropriate to allow the use of interim measures at the beginning of a market inquiry. While such interventionist measures may on rare occasions be justified in Competition Act 1998 ('**CA98**') cases, market inquiries perform a different function and operate in a different context. In particular:

- Whereas in CA98 cases there is a concern that a business has acted unlawfully, the purpose of a market inquiry is simply to consider features of markets to determine whether they are functioning well, without any suggestion of wrongdoing by any player.
- Unlike in CA98 cases, it is unlikely that there will be a complainant who has submitted evidence of harm. As such, the evidence needed to establish the basis for interim measures will need to be gathered entirely by the CMA itself. This will take time and resources away from the primary focus of the CMA, which is to complete the market investigation within an already-challenging statutory timetable (noting that no such consideration arises in Competition Act 1998 cases, where there is no timetable).
- Unlike a CA98 investigation, where the investigation is focused on an identified firm, or firms, a market inquiry considers an entire sector. As such, there may be many stakeholders it is likely to be difficult to identify which firm(s) should be subject to any interim measures and it would be necessary to include a large range of businesses in the relevant consultation.

Amazon agrees with the government that allowing the CMA to impose interim measures during a market investigation could risk prejudicing regulatory incentives and could lead to unintended market distortions.

Overall, interim measures constitute far-reaching interventions based on necessarily weak evidence (given the early stage at which they must be imposed), therefore it would be disproportionate to extend their potential use to situations where there is no indication that the law has been infringed.

Binding commitments at any stage of the process

Amazon supports the proposal that the CMA should be able to accept binding commitments at any stage in the market inquiry process. We agree that the ability to accept binding commitments at any stage would speed up the process and reduce the time and cost burden for the CMA as well as for businesses. We also agree that commitments should be capable of addressing either all of or just some of the issues in a market inquiry.

Further, we note that the proposal's underlying rationale applies equally to the merger control regime. While it has not been suggested in this consultation, we would support the CMA being able to accept commitments at any point during the merger control process (in both Phase 1 and 2).

In general, the ability to accept binding commitments across CA98 cases, market inquiries and merger control would have the effect of making processes more efficient and may result in better outcomes for consumers reached more speedily. As a matter of principle, the main driver of whether commitments are an appropriate step should be the question of whether the CMA is satisfied that, in light of the analysis and evidence gathered at that point, the commitments offered appear to be likely to be in the interests of consumers and/or address to a material extent any competition concerns identified. If that substantive requirement is met, there is no reason to place additional limits on the CMA's capacity to accept those commitments.

2. There is scope to improve the existing merger control process, whilst preserving the proportionality of the regime *(Questions 10, 11 and 12)*

Amazon agrees with the government that the UK's merger control process should be as efficient as possible and should focus its attention on mergers most likely to be harmful to competition and consumers, without unduly hindering benign investment. Further, we agree that, while the current voluntary and non-suspensory process strikes an appropriate balance between consumer protection and regulatory burden, there are ways in which this regime may be improved.

Turnover thresholds

Amazon supports the proposal by the government to raise the current turnover-based threshold for the target of a merger from £70m to £100m to adjust for inflation.

In addition, Amazon agrees that it would be useful to introduce a new limb to the jurisdictional threshold test, to capture mergers which are potentially harmful to competition and consumers, but which are not currently captured by the share of supply test (for example, mergers where the relationship between the parties to the transaction is purely vertical). We note that this additional limb may also help rationalise the CMA's use of the share of supply test, which has arguably been overextended to enable the assertion of jurisdiction where horizontal overlap was not initially clear. However, while Amazon supports this change in principle, and agrees with the government's aims, we believe that these aims could equally be achieved through the introduction of a less far-reaching test, which would offer significant protection for consumers and promote legal certainty, without tipping the balance of the regime too far towards increasing the regulatory burden on business and regulators.

The government's proposed third limb to the jurisdictional test (i.e. that jurisdiction could be established if 'any party to the merger has at least a 25% share of supply of particular goods or services in the UK, or a substantial part of the UK and has UK turnover of £100m') could in practice capture every acquisition by medium and large companies operating in the UK (in particular given the CMA's wide discretion in relation to the definition of a market for goods or services). While tempered slightly by the voluntary nature of the regime, this is clearly disproportionate and could lead to dozens of companies, who are rightly concerned about legal certainty, ensuring compliance and the potential implications of a transaction being 'called in', making notifications in relation to acquisitions of small targets, which clearly raise no substantive concerns. An unnecessarily burdensome merger control process may have a chilling effect on deal activity in the UK. In addition, it is clear that this would not be an effective use of CMA resources, particularly at a time when the UK regulator requires significant capacity to take on responsibility for the review of large, international transactions which may raise competition concerns and which were previously the preserve of the European Commission.

The merger control regime should be focussed on the impact of mergers as a result of the combination of two parties, each of which should have some form of strength, rather than mergers where only one party has strength. Amazon therefore proposes that a transaction value threshold be introduced to ensure that only acquisitions of firms that have strategic value are reviewable. If set at an appropriate level, this threshold would capture strategic acquisitions of early stage companies and companies in adjacent markets, i.e. the two categories of transaction which the government is concerned may be missed under the current framework, and, importantly, would exclude from review the numerous acquisitions of less strategically significant targets where there is no prospect of the transaction having an adverse impact on competition (but which would otherwise be captured by the government's proposed test).

In addition, Amazon proposes that there should be a UK nexus test included in the new third limb. While the existing tests imply UK effects, given that they refer to turnover of the target in the UK and UK shares of supply, there is a risk that the proposed new limb could capture transactions which could not credibly have any effect whatsoever on the UK market simply on the basis of the acquirer's position. In effect, this would mean that *all* acquisitions undertaken by any relatively large company (for example, Amazon, Tesco, BP, Barclays, BT, John Lewis, Visa, Unilever, Diageo, GlaxoSmithKline, Permira, Reckitt Benckiser, and many dozens more) would technically fall under the jurisdiction of the CMA. This is clearly disproportionate and unworkable and runs contrary to the UK's reputation for effective and pragmatic regulation.

Amazon recommends that the new jurisdictional test should be:

(a) the business that is being acquired must have a UK turnover of more than £100 million; or

(b) the merger would result in the creation or enhancement of at least a 25% share of the supply of particular goods or services in the UK, or a substantial part of the UK; or

(c) any party to the merger has at least a 25% share of supply of particular goods or services in the UK, or a substantial part of the UK **and** has UK turnover of more than £100 million **and** the transaction value is over £[x]m **and** the business that is being acquired must have activities in the UK.

Amazon notes that the introduction of a valuation-based threshold is a tested approach which has worked successfully in Germany and Austria where the thresholds are EUR400m and EUR200m respectively. In relation to the definition of 'activities' in the UK, this could include turnover, employees or premises.

Commitments

In line with the recommendations of the Penrose Report, enabling the CMA to agree binding commitments with parties to a transaction, at any stage of the process in Phases 1 or 2, would make merger review more effective and efficient for the CMA and for the businesses who engage with it. Amazon therefore supports this proposal.

3. Extending the CMA's jurisdiction in Competition Act 1998 cases is unnecessary and would be disproportionate *(Question 14)*

There is no reasonable justification for extending the CMA's jurisdiction in CA98 cases to cover agreements and conduct which have no plausible impact on UK consumers and competition. To do so would represent a significant territorial overreach, which would run contrary to the UK's reputation for good regulation.

The guiding principle defining the scope of the CMA's jurisdiction in relation to the Chapter I and Chapter II prohibitions under the CA98 should be the need to protect competition and consumers in UK markets. In assessing whether the current tests are sufficient to meet those aims, it is entirely irrelevant whether the EU or USA employ jurisdictional tests which go beyond this sensible and proportionate aim. Amazon is concerned that the position adopted in the consultation focuses more on international comparisons than on ensuring that the right approach is adopted to produce good outcomes for the UK economy.

Currently, to establish jurisdiction, two elements must be present:

(a) An effect on UK trade, ***and***

(b) A second element, being:

  (1) In the case of an agreement, implementation in the UK

  (2) In the case of an abuse, a dominant position in the UK.

The government's proposal is to change the test to one in which only one of two elements needs to be present:

(c) In the case of an agreement:

  (1) Either implementation in the UK; ***or***

  (2) Effects in the UK.

(d) In the case of an abuse:

  (1) Conduct in the UK; ***or***

  (2) Effects in the UK.

Amazon's objection to this change is simple: an effect on UK trade should be a necessary element in establishing the CMA's jurisdiction in every case.

In relation to the Chapter I prohibition, Amazon is concerned an agreement which is technically considered to have been implemented in the UK (for example, because it is implemented on a global basis) but which has no effect on UK consumers or markets would appear to be within the scope of the CMA's jurisdiction. No good reason is advanced in the consultation as to why this is necessary or proportionate.

In relation to the Chapter II prohibition, abuse of dominance, extending the jurisdiction as proposed would mean that certain conduct could amount to an infringement even where the business has no market power whatsoever with respect to customers in the UK. There is no policy need to intervene in those circumstances, and as a matter of law, it would not be reasonable or proportionate to apply the same standard to those businesses without market power in the UK as those who are dominant, simply because they may have market power in other markets outside the UK (a matter which the CMA is not well-placed to assess on a robust basis). The possible unintended consequence of setting jurisdiction in this unduly broad way is that it reduces the attractiveness of the UK as a market into which to expand global services.

Moreover, we are concerned that, rather than encouraging internal coherence, extension of the CMA's jurisdiction creates significant risk that the CMA will be drawn into matters that have no genuine relevance to the UK and should properly be dealt with under the jurisdiction of other authorities. It is entirely appropriate for the CMA to be able to investigate conduct which may also be being considered by other authorities where that conduct has an impact on the UK economy. However, extending the CMA's jurisdiction so that it can look at issues which only have any plausible impact on, for example, the US or France, would be disproportionate and unnecessary and would likely lead to divergent, or duplicative, decisions.

4. Full rights of appeal are necessary in Competition Act 1998 cases *(Question 24)*

Amazon strongly supports the government's view that '*to justify departing from the current system [i.e. a full merits review standard for all CA98 decisions], any change would need to deliver a more efficient enforcement process without unduly prejudicing the overall robustness of the UK's competition enforcement and the quality of the decisions it produces*.'[4] Amazon does not consider that a move to a judicial review appeal standard meets these criteria. Rather, it is likely to dilute the quality of decision making (both at the administrative level where the CMA would have less incentive to produce robust decisions, and at the judicial level, where the CAT would not have the flexibility to consider the substance of a case) and unduly limit rights of defence in circumstances where decisions can have extremely far-reaching, significant effects.

Merits review is the necessary, proportionate and appropriate standard for appeal of CA98 decisions for five main reasons.

1. **As the consultation states, "*Chapter I and Chapter II prohibitions operate in a similar way to prohibitions on unlawful conduct in criminal law*."**[5] In this context, it would be inappropriate to dilute an addressee's rights of defence. Unlike decisions of some regulators, CA98 decisions are generally applicable to all businesses in all sectors of the economy, and to all aspects of a business. Moreover, they have significant consequences, including material financial penalties. They therefore warrant proper scrutiny, consistent with the requirement under Article 6 ECHR that such important decisions be subject to a review mechanism that includes appeals to courts with 'full jurisdiction' to review the 'whole' decision.

2. **Merits review encourages well-reasoned decisions, in line with the government's ambition for UK leadership in a critical policy area.** There is value in creating accountability that drives the CMA to take robust, well-reasoned decisions. Indeed, while Lord Tyrie's reform proposals[6] cited as a drawback of the full merits appeal standard (on the basis that it causes delay) that '*the CMA takes particular care in ensuring the cases it takes forward are robust, and prepared to the highest standard, given the expected review by the court*'[7]. Amazon considers this to be a particularly positive aspect of the current regime and one that should be safeguarded. Implicitly encouraging less robust investigations at the administrative phase is not consistent with the government's aims to ensure the effective functioning of the competition law enforcement system.

3. **The issues raised in CA98 cases are complex, and relate to numerous different sectors and activities, making the risk of error greater.** That complexity, coupled with scope for significant impact, means that the scope for error is greater, and hence the value of additional scrutiny is more important. Unlike many specialist regulators, the CMA is required to make decisions in relation to any aspect of any business in any sector of the economy. It is therefore unreasonable to expect them to acquire the same levels of technical expertise in every industry, as would be expected of some administrative bodies with narrower functions. The judicial deference afforded to the CMA's decisions must reflect these challenges.

4. **There is no basis for suggesting JR will save time**. There is no evidence to support that judicial review is more streamlined or quicker than merits review. As the CAT itself put it, in blunt terms: '*There is no proper basis for the assertion that appeals on a 'judicial review' standard will be quicker and shorter than appeals to an 'on the merits' standard*.'[8]

5. **There is wide general support for maintaining a merits appeal standard**, not just from businesses and their advisors, but from the CAT itself, which, as the consultation highlights, argued strongly that the current standard of review was appropriate in response to the government consulting on the issue in 2013.[9]

Overall, it is crucial that the appeals framework provides effective oversight and quality assurance in respect of administrative decision-making processes and that it respects the rights of defence of businesses. Any dilution of judicial scrutiny in relation to CA98 decisions, which can have an extremely significant impact on

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[4] [Consultation], paragraph 1.206.
[5] [Consultation], paragraph 1.203.
[6] Referenced in the Consultation, paragraph 1.203.
[7] [Lord Tyrie's letter to BEIS], page 37.
[8] CAT response to BEIS consultation (https://www.regulation.org.uk/library/2013-CAT_Response_to_Streamlining_Regulatory_and_Competition_Appeals_Consultation.pdf)
[9] [Consultation], paragraph 1.204.

businesses, competition and, ultimately, consumers, would undermine confidence in the regime and could lead to poor decisions, which fail to properly protect consumer interests. It also risks undermining the UK's attractiveness to global investors, and reputation for fair and proportionate regulation. On this basis, Amazon feels strongly that the appropriate level of judicial scrutiny for decisions by the CMA in CA98 investigations remains full merits.

5. Amazon supports targeted intervention to tackle the 'fake reviews' industry *(Questions 42, 44 and 45)*

The commercial practice of commissioning or incentivising "fake consumer reviews" should be prohibited

Customer reviews play an important role in driving good consumer and competition outcomes. They help customers to make informed choices, enable businesses to receive feedback and innovate to improve products / services, and enable SMEs to grow an audience and scale drive competition. Misleading reviews, in contrast, damage customer trust and distort competition. We support the government's desire to protect customers' freedom to leave accurate reviews, whilst tackling those that seek to mislead.

The government should prohibit the commercial practice of commissioning or incentivising "fake consumer reviews" (options 42 (b) and (c)), but should not prohibit the broader commissioning or incentivising of consumer reviews in all circumstances (option 42 (a)).

Whilst accurate reviews help drive good consumer and competition outcomes, unfortunately a sophisticated industry has developed in recent years, with numerous bad actors looking to profit from generating biased reviews, by offering, procuring, selling, or hosting public and private groups where "fake" reviews are exchanged for compensation. Effectively tackling the challenges brought by this harmful industry requires the cooperation of private entities, governments, law enforcement, consumer protection regulators, and consumer associations, towards a common goal of eradicating this industry.

To help earn the trust of our customers, Amazon devotes significant resources to preventing fake or incentivised reviews from appearing in our store. Over many years, we have continued to invent, deploy, and continually improve sophisticated technology powered by machine learning and couple that with expert human investigators to proactively prevent fake reviews from ever being seen in our store. In 2020, over 200 million reviews were either blocked or removed. More than 99% of reviews enforcement was driven by our proactive detection. We also banned over 1.2 million accounts in 2020 for suspected fake reviews and have sued bad actors (and where appropriate reported them to law enforcement).

We are relentless in protecting our store and are therefore aligned with the government that the commercial practice of commissioning or incentivising "fake consumer reviews" (options 42 (b) and (c)) should be prohibited. However, we do not agree with prohibiting the broader commissioning or incentivising of consumer reviews in all circumstances.

In general, commissioned "fake" reviews are those generated through monetary or other incentives that do not reflect a genuine experience or impartial opinion of the good or service being reviewed. They can be commissioned as positive or negative (for example, to discredit a competitor's product), prepared by real or fictitious consumers, and are submitted without full and clear disclosure of received incentives. The commissioning of "fake" reviews should be added to the Schedule 1 list of automatically unfair practices as harmful to consumers and businesses.

At the same time, we agree with the government that commissioned reviews are not necessarily all fake. For example, a business may provide a consumer with a free new product or a small incentive in order to get the consumer's opinion of the product, which in turn is informative to both the business and other consumers. Without such commissioned reviews, it would be difficult for new businesses and products to find an audience, as consumers may be hesitant to purchase products without reviews. We agree with the government that in such cases, it should be clearly disclosed that the consumer was incentivised to write the review; businesses should also not specifically ask consumers to write a certain type of review as a condition of accepting the incentive. For these reasons and subject to these guardrails, commissioning consumer reviews in all circumstances should not be added to the list of automatically unfair practices in Schedule 1.

Any obligations on businesses which 'host' fake reviews must be proportionate and adaptable

This is not an area where a one-size-fits-all approach is in the best interest of consumers. Consumer reviews are common across many sectors and businesses must be permitted to implement the policies that will secure the best outcomes for consumers, while accommodating their unique business needs.

Further, in taking steps to tackle fake reviews, caution must be exercised so that customer opinions are not overly censored. Consumers' freedom to express their views, good or bad, must be protected.

Amazon welcomes the opportunity to further discuss what 'reasonable and proportionate' steps entail. By way of example this could include:

(a) Creating and maintaining clear policies that define and prohibit fake reviews for products and services. The policies should clearly set out the actions that will be taken where non-genuine reviews are found to have been posted.

(b) Providing mechanisms for consumers and third parties to report "fake" reviews to the business.

(c) Collaborating with governments, law enforcement, consumer protection regulators and consumer associations to identify and pursue the bad actors in the "fake" reviews industry.

(d) Exercising due diligence to proactively block or remove "fake" reviews on products and services.

6. Any changes to consumer law enforcement must maintain sufficient protections for businesses *(Questions 55 and 58)*

Today, UK consumer law enables a court to decide, after reviewing the applicable evidence and hearing from both parties, if a trader is in breach of consumer law and whether the measures being proposed by the enforcer, but being rejected by a trader, are just, reasonable and proportionate. Sometimes the Court agrees with the CMA's position; sometimes it does not. This is a fair and due process that offers sufficient protections to all parties.

Above all, any changes made to empower the CMA to enforce consumer protection directly (rather than through the civil courts) needs to afford traders the same protections that exist today. This is especially the case where the CMA's proposed powers of penalty are to be increased substantially to up to 10% of global turnover – far higher than anywhere else in Europe.

It is of upmost importance that there is full and adequate scrutiny of any decision made by the CMA, to ensure traders have a fair and due process. Traders should also have a right to seek declaratory relief from a Court as regards the interpretation of any undertakings or court orders.

Next steps

This is a broad consultation. We have tried to focus on the most important issues to Amazon, where we hope our perspective will be useful to the government. If it would be helpful to the government, we would be very happy to continue discussing the above issues, or any other in the consultation, in more detail.