



## **Response to BEIS consultation: Reforming Competition and Consumer Policy**

### **Introduction**

The UK Regulators Network welcomes the progress of proposals initially set out in the 2018 Government Green Paper, Modernising Consumer Markets.

We note that this consultation brings in the parallel improvements proposed for the UK competition regime, some of which were brought forward by Lord Andrew Tyrie, former Chair of the Competition and Markets Authority, alongside proposals for improvement to the consumer protection regime.

UKRN supports proposals to improve and strengthen the competition and consumer regimes in the interests of enhanced protections for UK consumers, and is supportive of the direction of travel of these latest proposals and their objectives. We agree it is appropriate to look at competition and consumer powers in parallel given the interdependent role each plays in making markets work well for UK consumers and businesses. There is an opportunity to bring requirements for compliance and information closer together, for example, across the competition and consumer regimes, in order to enable a consistent and more effective enforcement approach.

### **Competition Powers**

Several of our members have concurrent competition powers with the Competition and Markets Authority but these powers are not in scope for UKRN and are considered through the UK Competition Network Group. We shall not therefore be commenting further on Chapter 1 of the consultation document in this response.

### **Consumer Protection Powers**

UKRN agrees that the consumer experience of markets is changing and that the rise of online shopping and consumer interaction with markets has accelerated further and faster as a consequence of the Covid-19 pandemic. The legislative toolkit needs to be capable of responding to this and future changes so that regulators can act nimbly and remain agile in protecting consumers, particularly vulnerable consumers. Consumers should feel safe and confident about engaging with markets. Consumers need to trust that they will get good outcomes, and if for some reason they do not, then they have easy access to effective dispute resolution mechanisms that can put things right for them.

The challenge of ensuring consumers are safe from harm online is huge. We also welcome and support the establishment of the Digital Regulation Co-operation Forum which combines the expertise of our member bodies the FCA, Ofcom, the ICO and the CMA (which is an observer member of UKRN).

We believe that developing cross regulatory approaches is a necessity in a world where sectors are converging and innovation creates new markets which combine features of more traditional markets, which may be regulated under different regimes. Any new regulatory frameworks to protect consumers must take this into account so that regulation can respond quickly to emerging threats without having to look for piecemeal changes to regulatory rules and frameworks.

## Chapter 2

### Consumer data

Firms increasingly use consumer data in ways that may not necessarily be transparent to customers. High data protection standards will continue to be an important tool to maintain trust in markets and we note the likelihood of reforms in that context coming forward from Government.

There are also opportunities for consumer data to benefit and better support consumers, particularly in relation to the needs of consumers in vulnerable circumstances.

Modern regulatory practice demonstrates the value of trialling remedies in appropriate cases, particularly where remedies are intended to change consumer behaviour/in the event of a new emerging consumer harm. A trial tests proposed measures in 'real life' scenarios, using data from a sample of customers in order to evaluate their actual response. UKRN believes that measures should be considered to help sector regulators secure adequate participation in trials by firms. This should help ensure sector-specific remedies can be effectively 'tested', and that regulation is effective.

UKRN will continue to explore the use of, and innovation in data, including potential for sharing, to improve outcomes for consumers in vulnerable circumstances or with additional needs.

### Prepayments and subscription traps

Strengthening the law relating to prepayments will help trust in markets and we support measures which may particularly protect those who are least able to bear losses of this kind. Equally, we note that lower income consumers who inadvertently get caught in subscription traps may suffer disproportionately from losses and a result of being unable to extricate themselves from such arrangements. There has been previous work to help tackle the problem including through the Consumer Protection Partnership in BEIS which may be helpful in building a solution.

In some sectors, existing consumer protections regarding subscriptions are stronger than those proposed in the consultation. There are often good reasons for this, in particular where consumers pay for equipment or a connection as part of their subscription. It is important that these are not undermined by new cross-sectoral consumer protection rules.

Transparency upfront on terms of any subscription commitment and how to cancel it should form part of any new proposals.

## Chapter 3

### The power of deterrence

The practices set out in Chapter 2 should in many instances be capable of action under the Consumer Protection powers afforded to the CMA, Local Authority Trading Standards Services (LATSS) and the sector regulators with concurrent powers under Part 8. We welcome the introduction of penalties for breaches of the relevant consumer law which should act as a deterrent. Strengthening rules around these practices and enabling prompt enforcement with a less cumbersome process is likely to act as a greater deterrent and help suppress such activity. Further to prioritisation, lower detriment cases may not always justify the resource required to action them under the current consumer regime, which can require regulators to engage in long running action and evidence gathering, looking to the courts to provide injunctions and ultimately fines for their breach.

The proposals in Chapter 3 could potentially (depending on the approach taken to the administrative model) enable limited regulatory resource to be used more effectively, to target detriment earlier and send a strong signal about the need for traders to treat consumers fairly in the UK. It could also free up the courts, which often have limited expertise in consumer protection law, to focus elsewhere. The UKRN therefore strongly welcomes proposals to enable prompter action by the CMA, or where appropriate concurrent members, to prevent consumer harm without the need to go to court in every case where traders do not comply with early intervention efforts. The ability to take direct action, including fining powers (civil sanctions), would act as a stronger deterrent against rogue traders and those who may seek to game the current system by dragging out the process.

#### Concurrent regulatory powers

Those regulators who have concurrent consumer powers under Part 8 of the Enterprise Act are all members of UKRN and therefore have an interest in the progress of the proposals. We note that the administrative model of enforcement will not be automatically available to them. UKRN appreciates why this approach may be adopted, as each regulator operates under a different regulatory framework with different powers and therefore has a greater or lesser need to access general consumer powers to tackle mischief and detriment, depending on their toolkit.

Some members have a strong appetite to access the administrative powers early, alongside the CMA. The administrative model will help level the playing field between some sectoral and consumer law powers, enabling those members' ability to better protect consumers in their sector(s). There is strong support within UKRN for these enhanced powers, including civil sanctions, and access to administrative enforcement powers.

And while relevant members currently have a greater or lesser immediate need to access and use these powers, dependent on the features of their existing toolkits, there are benefits from creating the potential for consistent use of consumer protection powers across regulated sectors. These include the potential to reduce consumer confusion about their rights and create a more even enforcement playing field relating to consumer rights, supporting trust in markets.

Our members with concurrent powers all want to engage closely with the process of further developing these proposals to ensure maximum utility of the powers in the interests of consumer protection, while balancing the need to ensure fair traders are not subject to disproportionate action.

UKRN members collectively and individually look forward to working with BEIS on the next steps, sharing experience and expertise to ensure best outcomes all round. There is particular interest in civil sanctions, the administrative model and the approach to decision making within the CMA as well as how firms will be able to challenge decisions and to which body.

The percentage turnover formula for calculating fines is consistent with the approach taken under competition law, but may not be consistent with other fining models pre-existing in sector regimes. Since there will be other differences between competition and consumer enforcement models, it will be helpful to explore proposals that would fit alongside existing sectoral fining models.

#### Improving consistency

UKRN recognises that there is often an incentive for regulators to prefer the use of sectoral enforcement powers to secure better, faster outcomes for consumers and businesses, and to maximise the effect of the public resources deployed. Extension of proposed consumer powers would help some members to better align and make more consistent use of all their enforcement

powers by selecting the enforcement regime that best fits the circumstances of a case and generates maximum strategic benefit to consumers and businesses.

Improving the utility of the general consumer protection powers is likely to increase their application by our members, as part of their regulatory toolkit, when deemed appropriate. For those members who see gaps in their current powers to tackle certain detriments, there are incentives for early access to the enhanced powers proposed.

Broader access to powers under the proposed framework could support the potential for greater consistency of approach, in line with Government's stated ambitions further to the Better Regulation agenda, and it may encourage greater consistency of standards in regulated markets from a consumer perspective. There is potential to fill gaps, where they exist in regulatory toolkits, which will help to standardise consumer expectations and trader understanding, and the ability to tackle problems arising in converging markets (see above).

Greater consistency in the consumer experience of ADR will also help to deliver these outcomes. We support proposals to improve consumer access to ADR across the economy, particularly in those sectors where there is a history of high unresolved detriment but caution against applying a 'one-size fits all approach' for all sectors. We note that some sectors may, given the products and services subject of dispute, require greater expertise and time to resolve correctly. We would caution against simply speeding up the process at the risk of poorer decision making or scrutiny, especially where larger sums are involved, and look to BEIS to work with our members on the detail to avoid any unintended consequences.

In this regard we also express caution about charging consumer fees for access to ADR, as even what may be considered small amounts may put off low income or low confidence consumers from seeking redress, and these may be the consumers that would benefit most and may find it hardest to engage with the process.

### **Closing thoughts**

In summary the UKRN commends the government on bringing forward this much needed suite of proposals. We look forward to working closely to ensure the legislation can be brought through at the earliest opportunity, to secure the improvements needed to ensure greater consumer trust and confidence in markets at this time when we are seeking to build back better.

It would be helpful to have greater clarity on timelines and how the proposals will be packaged in legislation, for example are the competition and consumer proposals likely to stay bundled together moving forward, including proposed legislative vehicles for the changes.