

Response ID ANON-N31T-5NZF-9

Submitted to Reforming Competition and Consumer Policy
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About you

What is your name?

Name:

[REDACTED]

What is your email address?

Email:

[REDACTED]

What is your organisation?

Organisation:

QASSS Ltd

Are you happy for your response to be published?

Yes

Would you like to be contacted when the consultation response is published?

Yes

Competition

1 What are the metrics and indicators the CMA and government could use to better understand and monitor the state of competition in the UK?

Please respond here.:

2 Should the CMA have a power to obtain evidence specifically for the purpose of advising government on the state of competition in the UK?

Not Answered

Please expand on your answer here.:

3 Should government provide more detailed and regular strategic steers to the CMA?

Not Answered

Please expand on your answer here.:

4 Should the CMA be empowered to impose certain remedies at the end of a market study process?

Not Answered

Please expand on your answer here.:

5 Alternatively, should the existing market study and market investigation system be replaced with a new single stage market inquiry tool?

Not Answered

Please expand on your answer here.:

6 Should government enable the CMA to impose interim measures from the beginning of a market inquiry?

Not Answered

Please expand on your answer here.:

7 Should government enable the CMA to accept binding commitments at any stage in the market inquiry process?

Not Answered

Please expand on your answer here.:

8 Will government's proposed reforms help deliver effective and versatile remedies for the CMA's market inquiry powers?

Not Answered

Please expand on your answer here.:

9 What other reforms would help deliver more efficient, flexible, and proportionate market inquiries?

Please respond here.:

10 Should the current jurisdictional tests for the CMA's merger control investigations be revised? If so, what are your views on the proposed changes to the jurisdictional tests?

Not Answered

Please expand on your answer here.:

11 Are there additional or alternative reforms to the current jurisdictional tests for the CMA's merger control investigations that government should be considering?

Not Answered

Please expand on your answer here.:

12 What reforms are required to the CMA's merger investigation procedures to deliver more effective and efficient merger investigations?

Please respond here.:

13 Should the CMA Panel be retained, but reformed as proposed above? Are there other reforms which should be made to the panel process?

Not Answered

Please expand on your answer here.:

14 Should the jurisdictional requirements of the Chapter I and Chapter II prohibitions be changed so that they apply to all anticompetitive agreements which are, or are intended to be, implemented in the UK, or have, or are likely to have, direct, substantial, and foreseeable effects within the UK, and conduct which amounts to abuse of a dominant position in a market, regardless of the geographical location of that market?

Not Answered

Please expand on your answer here.:

15 Should the immunities for small agreements and conduct of minor significance be revised so that they apply only to businesses with an annual turnover of less than £10 million?

Not Answered

Please expand on your answer here.:

16 If the immunity thresholds are revised for agreements of minor significance, should the immunity apply to (a) any business which is party to an agreement and which has an annual turnover of less than £10 million or (b) only to agreements to which all the business that are a party have an annual turnover of less than £10 million?

Not Answered

Please expand on your answer here.:

17 Will the reforms being considered by government improve the effectiveness of the CMA's tools for identifying and prioritising investigation? In particular will providing holders of full immunity in the public enforcement process, with additional immunity from liability for damages caused by the cartel help incentivise leniency applications?

Not Answered

Please expand on your answer here.:

18 Will the CMA's interim measures tool in Competition Act investigations be made more effective by (a) changing the procedures for issuing decisions and/or (b) changing the standard of review of appeals against the decision?

Not Answered

Please expand on your answer here.:

19 Will the reforms in paragraphs 1.170 to 1.174 improve the effectiveness of the CMA's tools for gathering evidence in Competition Act investigations? Are there other reforms government should be considering?

Not Answered

Please expand on your answer here.:

20 Will government's proposals for the use of Early Resolution Agreements help to bring complex Chapter II cases to a close more efficiently? Do government's proposals provide the right balance of incentives between early resolution and deterrence?

Not Answered

Please expand on your answer here.:

21 Will government's proposals to protect documents prepared by a business in order to seek approval for, and operate, a voluntary redress scheme from disclosure in civil litigation encourage the use of these redress schemes?

Not Answered

Please expand on your answer here.:

22 Will government's proposed reforms help to speed up the CMA's access to file process and by extension the conclusion of the CMA's investigations?

Not Answered

Please expand on your answer here.:

23 Should government remove the requirements in the CMA Rules on the decision makers for infringement decisions in Competition Act investigations?

Not Answered

Please expand on your answer here.:

24 What is the appropriate level of judicial scrutiny for decisions by the CMA in Competition Act investigations?

Please respond here.:

25 What is the appropriate level of judicial scrutiny for decisions by the CMA in relation to non-compliance with investigative and enforcement powers, including information requests and remedies across its functions?

Please respond here.:

26 Are there reforms which fall outside the scope of government's recent statutory review of the 2015 amendments to Tribunal's rules which would increase the efficiency of the Tribunal's appeal process for Competition Act investigations?

Not Answered

Please expand on your answer here.:

27 Will the new investigative powers proposed help the CMA to conclude its investigations more quickly? Are the proposed penalty caps set at the right level? Are there other reforms to the CMA's evidence gathering powers which government should be considering?

Not Answered

Please expand on your answer here.:

28 Will the new enforcement powers proposed improve compliance? Are the proposed penalty caps at the right level? Are there other reforms to the CMA's enforcement powers which government should be considering?

Not Answered

Please expand on your answer here.:

29 What conditions should apply to the CMA's use of investigative assistance powers to obtain information on behalf of overseas authorities?

Please respond here.:

Consumer Rights

30 Do you agree with the description of a subscription contract set out in Figure 8 of this consultation? How could this description be improved?

Yes

Please expand on your answer here.:

31 How would the proposals of clarifying the pre-contract information requirements for subscription contracts impact traders?

Please respond here.:

32 Would it make it easier or harder for traders to comply with the pre-contract requirements? And why?

Not Answered

Please expand on your answer here.:

33 How would expressly requiring giving consumers to be given, in all circumstances, the choice upfront to take a subscription contract without autorenewal or rollover impact traders?

Please respond here.:

34 Should the reminder requirement apply where (a) the contract will auto-renew or roll-over, at the end of the minimum commitment period, onto a new fixed term only, or (b) the contract will auto-renew or roll-over at the end of the minimum commitment period?

Not Answered

Please expand on your answer here.:

35 How would the reminder requirement impact traders?

Please respond here.:

36 Should traders be required, a reasonable period before the end of a free trial or low-cost introductory offer to (a) provide consumers with a reminder that a "full or higher price" ongoing contract is about to begin or (b) obtain the consumer's explicit consent to continuing the subscription after the free trial or low cost introductory offer period ends?

Not Answered

Please expand on your answer here.:

37 What would be the impact of proposals regarding long-term inactive subscriptions have on traders' business models?

Please respond here.:

38 What do you consider would be a reasonable timeframe of inactivity to give notice of suspension?

Please respond here.:

39 Do you agree that the process to enter a subscription contract can be quicker and more straightforward than the process to cancel the contract (in particular after any initial 14 day withdrawal period, where appropriate, has passed)?

Not Answered

Please expand on your answer here.:

40 Would the easy exiting proposal, to provide a mechanism for consumers that is straightforward, cost-effective, and timely, be appropriate and proportionate to address the problem described?

Not Answered

Please expand on your answer here.:

41 Are there certain contract types or types of goods, services, or digital content that should be exempt from the rules proposed and why?

Not Answered

Please expand on your answer here.:

42 Should government add to the list of automatically unfair practices in Schedule 1 of the CPRs the practice of (a) commissioning consumer reviews in all circumstances or (b) commissioning a person to write and/or submit fake consumer reviews of goods or services or (c) commissioning or incentivising any person to write and/or submit a fake consumer review of goods or services?

Not Answered

Please expand on your answer here.:

43 What impact would the reforms mentioned in Q42 have on (a) small and micro businesses, both offline and online (b) large online businesses and (c) consumers?

Please respond here.:

44 What 'reasonable and proportionate' steps should be taken by businesses to ensure consumer reviews hosted on their sites are 'genuine'? What would be the cost of such steps for businesses?

Please respond here.:

45 Should government add to the list of automatically unfair practices in Schedule 1 of the CPRs the practice of traders offering or advertising to submit, commission or facilitate fake reviews?

Not Answered

Please expand on your answer here.:

46 Are consumers aware of businesses using behavioural techniques to influence choice that affect their purchasing decisions? Is this a concern that they would want to be addressed?

Not Answered

Please expand on your answer here.:

47 Do you think government or regulators should do more to address (a) 'drip pricing' and (b) paid-for search results that are not labelled accordingly, as practices likely to be breached under the CPRs?

Not Answered

Please expand on your answer here.:

48 Are there examples of existing consumer law which could be simplified or where we could give greater clarity, reducing uncertainty (and cost of legal advice) for businesses/consumers?

Not Answered

Please expand on your answer here.:

49 Are there perverse incentives or unintended consequences from our existing consumer law?

Not Answered

Please expand on your answer here.:

50 Are there any redundant or unnecessarily burdensome requirements to provide information or other reporting requirements, which burden businesses disproportionately compared to the benefits they bring to consumers?

Not Answered

Please expand on your answer here.:

51 Do you agree that these powers should be used to protect those using "savings" clubs that are not currently within scope of financial protection laws and regulators?

Not Answered

Please expand on your answer here.:

52 What other sectors might new powers regarding prepayment protections be usefully applied to?

Please respond here.:

53 How common is the practice of using terms and conditions to delay the formation of a sales contract?

Please respond here.:

54 Does the practice of using terms and conditions to delay the formation of a sales contract cause, or have the potential to cause, detriment to consumers? If so, what is the nature of the detriment or likely detriment?

Not Answered

Please expand on your answer here.:

Consumer Law Enforcement

55 Do you agree with government's proposal to empower the CMA to enforce consumer protection law directly rather than through the civil courts?

Yes

Please expand on your answer here.:

I feel that the CMA with better empowerment will become a much better deterrent to traders breaching consumer protection law. If we the deterrent is there, it will save a lot of the problems happening in the first place. I feel there is a 'try your luck' mentality with some traders, knowing that they will not always be reprimanded.

56 What would be the benefits and drawbacks of the CMA retaining the same or similar enforcement scope under an administrative model as it has under the court-based, civil enforcement process under Part 8 of the EA 02?

Please respond here.:

57 What processes and procedures should the CMA follow in its administrative decision-making to ensure fair and proportionate administrative decisions?

Please respond here.:

58 What scope and powers of judicial scrutiny should apply in relation to decisions by the CMA in consumer enforcement investigations under an administrative model?

Please respond here.:

59 Should appeals of administrative CMA decisions be heard by a generalist court or a specialised tribunal? What would be the main benefits of your preferred option?

Yes

Please expand on your answer here.:

For me it's a specialised tribunal similar to that of an employment tribunal. A panel of 3, with one advisor coming from a trading background and one advisor coming from a consumer rights background, with the judge making the ultimate decision. This should allow for balanced and informed appeals to be heard effectively.

60 Should sector regulators' civil consumer enforcement powers under Part 8 of the EA 02 be reformed to allow for enforcement through an administrative model? What specific deficiencies do you expect this to address?

Not Answered

Please expand on your answer here.:

61 Would the proposed fines for non-compliance with information gathering powers incentivise compliance? What would be the main benefits, costs, and drawbacks from having an option to impose monetary penalties for non-compliance with information gathering powers?

Maybe

Please expand on your answer here.:

Although money talks, we can see the threat of fines or penalties regularly being used in certain industries. For some traders it works, for others it puts their already strained business under even more strain, and if it goes bust, the consumer detriment is at its highest. There needs to be equal weighting towards financial penalties and education.

62 What enforcement powers (or combination of powers) should be available where there is a breach of a consumer protection undertaking to best incentivise compliance?

Please respond here.:

Similar to driving penalties. I believe there is a mandatory education requirement that should come first, potentially using a points system, and followed by a financial then legal penalty system.

63 Should there be a formal process for agreeing undertakings that include an admission of liability by the trader for consumer protection enforcement?

Not Answered

Please expand on your answer here.:

64 What enforcement powers should be available if there is a breach of consumer protection undertakings that contain an admission of liability by the trader, to best incentivise compliance?

Please respond here.:

65 What more can be done to help vulnerable consumers access and benefit from Alternative Dispute Resolution?

Please respond here.:

Raising the profile of ADR in general will help this, and ensuring it is getting regular coverage through all consumer advice bodies, and specific vulnerable consumer bodies.

Upgrading the current ADR service provider requirements to ensure there is rigour around vulnerable person policies, training and looking for the same when it comes to diversity.

Currently a lot of this is nodded to in ADR frameworks but not really highlighted. Interestingly in the claims handling world, this approach is becoming much more mature and the dispute resolution world needs to catch up.

66 How can regulators and government balance the need to ensure timely redress for the consumer whilst allowing businesses the time to investigate complex complaints?

Please respond here.:

There needs to be a splitting up of the resolution process into stages. When a trader has 56 days to resolve a complaint or issue a letter of deadlock (or request an extension), they could happily leave it until day 40 for example, before addressing. Which also reduces their chances of a successful resolution.

Traders need to be seen to show willing. Tighter deadlines on acknowledgements of complaints, followed by deadlines around initiating investigations are important. If the front end is sped up, this normally leads to more successful resolution outcomes.

67 What changes could be made to the role of the 'Competent Authority' to improve overall ADR standards and provide sufficient oversight of ADR bodies?

Please respond here.:

I think we can see that budgets for overseeing ADR bodies is stretched. We know ourselves that ADR bodies are operating outside of the requirements, and will do so regularly due to the lack of oversight.

A revitalised compliance budget would be useful to the competent authority and potentially a move towards 'self-auditing' allowing the compliance teams to then focus their actions or oversight on specific issues or organisations.

More industry standard KPIs would also be useful, which I believe requires further consultation to ensure all KPIs are being understood against the behaviours that they drive.

68 What further changes could government make to the ADR Regulations to raise consumer and business confidence in ADR providers?

Please respond here.:

There are several elements to this:

- Improve and ensure ADR is being presented to both consumers and businesses ahead of litigation. Claims Management Companies dominate the online world and continue to ensure unhappy consumers are led down the route to court, bypassing the ADR option.

- Address the issue of dwell times within ADR. The average time to resolve a dispute across the industry is far too long. Reducing the time for a consumer to be able to access ADR is one thing, but if that process then takes as long as a lengthy court process, the profile of ADR will struggle.

- Improving the balance of parity. Traders continue to believe that ADR is weighted towards the consumer when outcomes do not always reflect that. As a result, many do not believe in the process and would prefer to go to court.

- Linking to the above, businesses normally incur the cost of ADR, even if they are successful in the process. Bringing more fair terms around where cost is incurred could help raise the profile. We need businesses to want to engage in the process to avoid them wishing to take the litigation route.

69 Do you agree that government should make business participation in ADR mandatory in the motor vehicles and home improvements sectors? If so, is the default position of requiring businesses to use ADR on a 'per case' basis rather than pay an ADR provider on a subscription basis the best way to manage the cost on business?

Yes

Please expand on your answer here.:

Unfortunately, the used cars and home improvement sector have always featured regularly in consumer detriment reporting. We often reference the work completed by Citizens Advice and Which? here.

In terms of payment models there are other alternatives to both of the above which we believe removes the issue of the burden of cost and where it sits. We believe there is a way to ensure ADR is costed at way below any guidance provided on nominal fees. I am happy to provide more information on this separately.

In terms of the two models above, the main offering is an annual membership fee PLUS the per case fee. That is an important point as the ombudsman landscape normally looks for the membership fee as a retainer, to make it worth their while and to cover any inbound calls/emails that may come in. So it is rarely just a per case fee. There is also adhoc costs for say an inspection, or a more thorough Section 35 compliant inspection. So the per case model is normally not just per case, but with other elements attached.

The subscription model, depending on what is included can work very well. Financial Controllers are normally happy as the costs are budgeted and there is rarely a surprise unless adhoc inspections for example are not included.

We have been operating using subscription pricing plus our new way of pricing, and both appear to work well with our clients.

70 How would a 'nominal fee' to access ADR and a lower limit on the value of claims in these sectors affect consumer take-up of ADR and trader attitudes to the mandatory requirement?

Please respond here.:

The nominal fee 'for a consumer' will continue to increase the feeling amongst traders that ADR is set up to lean in favour of consumers. ADR providers need revenue to operate and the lower the nominal fee for a consumer, the more they will attempt to charge the trader. This may increase the take up amongst consumers, but the take up from traders will reduce.

Lowering the value limit of claims is a good idea so long as the ADR resolution dwell times are faster and the costs are less than proceeding through the small claims court.

I believe attitudes towards mandatory ADR from consumers will be limited. The profile of ADR amongst consumers is not strong enough for any change in legislation to make a positive impact, UNLESS, more is done to raise the profile of ADR and its use.

Good traders will support the decision for mandatory ADR, whilst lesser developed traders will push against it due to the operational pressures and financial pressures.

That said, with around 1.1m traders in the home improvement sector, there are too many traders out there not taking their obligations seriously when it comes to service. Therefore we would encourage mandatory ADR in both this and the used car sector.

71 How can government best encourage businesses to comply with these changes?

Please respond here.:

Tone of voice - traders do believe that ADR is setup to work against them. Parity is a word that must be used and must be measured to give businesses confidence that they have a right to defend themselves, and, even raise disputes against a consumer.

Where a trader incurs cost, in a successful resolution outcome for them, they could be offered a channel to get a refund of their costs from either the consumer or a central government fund.

Improving dispute resolution times. For businesses time is money. If disputes are taking in excess of 3 months to resolve, it can cause a significant impact on their cashflows and management time.

72 To what extent do you consider it necessary to open up further routes to collective consumer redress in the UK to help consumers resolve disputes?

Please respond here.:

We see very little of this in the UK other than from the Financial Ombudsman Service. It quite often is a long process. Therefore to exercise it in more areas requires the process to be more efficient and I believe the ADR provider must be in a certain 'tier' whereby they have the skill and experience to

make such overarching decisions.

73 What impact would allowing private organisations and consumer organisations to bring collective redress cases in addition to public enforcers have on (a) consumers, and (b) businesses?

Please respond here.:

This very much depends on how much of a grip the FCA has over claims management companies. They are now under their stewardship and they must ensure there are robust safeguards in place to ensure we do not see multiple 'claim culture' activities in the market, which in turn reduce supply for such services due to the risk, or increase the cost of such services or products due to the risk.

74 How can national enforcement agencies NTS and TSS best work alongside local enforcement to tackle the largest national cases of criminal breaches of consumer law?

Please respond here.:

I don't feel equipped to answer this.

75 Does the business guidance currently provided by advisory bodies and public enforcers meet the needs of businesses? What improvements could be made to increase awareness of consumer protection law and facilitate business compliance?

Yes

Please expand on your answer here.:

More mandatory training. In the financial services world, 'Treating Customers Fairly' is a mandatory training requirement. A similar programme should be introduced into those sectors where consumer detriment is highest, for both ADR Providers and Traders.