

Response ID ANON-N31T-5NCR-X

Submitted to Reforming Competition and Consumer Policy
Submitted on 2021-09-30 15:49:03

About you

What is your name?

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What is your organisation?

Organisation:

People's Postcode Lottery

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?

Maybe

Please expand on your answer here.:

As set out in our response to Q41, we would suggest that subscriptions for charities (including subscriptions for charity lotteries) should either be removed from the definition of “subscription” for the purposes of the proposed legislation, or feature as a specific exemption.

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

Please respond here.:

We agree that providing clear pre-contract information would protect consumers and would not harm responsible traders. It would be important to make clear in any legislation that where no fixed initial term currently exists that there is no obligation to create one, nor should any trader be disadvantaged by not creating a fixed initial term, as this would clearly be detrimental to the consumer.

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

Maybe

Please expand on your answer here.:

Please see the response to Q31 above.

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.:

With respect to charity subscriptions and charity lotteries there is usually no initial fixed term and no cancellation period, so the consumer is free to start and stop as they wish. An acknowledgement at the point of sign up that the contribution would continue at regular intervals after the first payments would not be expected to detrimentally impact charities or charity lottery operators as this would already be expected to be in place.

The consultation does not appear to suggest allowing consumers/patrons to self-determine a fixed period for contributions and we support this position. Allowing consumers/patrons to determine a fixed period would add significant complexity to the operation of no-commitment donations or products and would run counter to the flexible model employed by many charities and charity lotteries.

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?

Maybe

Please expand on your answer here.:

We believe that the reminder requirement should apply in the circumstances where the contract will auto-renew or roll-over, at the end of the minimum commitment period, onto a new fixed term only. We believe that flexible contracts with no or minimal commitment/cancellation period offer the consumer/donor greatest protection and this change would encourage traders to adopt that model.

35 How would the reminder requirement impact traders?

Please respond here.:

There would be administration costs associated with reminders, and the necessary systems for these. The extent of such costs and impact on traders would be likely to depend on the detail of the requirements ultimately introduced.

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?

Maybe

Please expand on your answer here.:

People’s Postcode Lottery does not offer any free trial periods, so has no comment on this.

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

Please respond here.:

Lottery subscriptions which have been paid for cannot by their very nature be inactive.

Taking People's Postcode Lottery as an example, players who pay are entered into the draws. Even if it transpired a player was deceased the subscription would not be inactive in the sense of purchased tickets not having been entered into the relevant draw. In circumstances where tickets purchased by a deceased player won a prize, the prize is treated as an asset of the deceased Player's estate and made over to the Player's personal representatives or executors entitled to collect it. In any event, taking the specific example of deceased persons we find that this is communicated in a timely manner by the bank or payment provider and we very rarely see examples of subscriptions continued for a significant period following their death.

These unusual features of the subscription lottery model, in which it is not possible for a paid-for subscription to be inactive, represent a further reason why subscription lotteries should be exempt from the proposals. It seems likely similar considerations would also apply to subscriptions to charities generally, given they differ from a conventional transactional model where someone is simply subscribing for goods or services, rather than subscribing in order to support the good works of a charity.

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

Please respond here.:

We have no comment to make on this, given as mentioned in Q37 it would not be possible for a paid for subscription to a lottery to be inactive, as the paid for tickets would be entered into the draw, and the player (or their estate, in circumstances where they player had died) entitled to any prizes won. In the event subscription lotteries were included within the ambit of the new rules being introduced following this consultation, the drafting of such rules would need to take account of the fact such paid for subscriptions could not, by their nature, be inactive.

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)?

Maybe

Please expand on your answer here.:

In the case of People's Postcode Lottery, it is easy to subscribe, and easy to unsubscribe – there is no minimum subscription period so players can stop their subscription at any time.

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?

Maybe

Please expand on your answer here.:

As mentioned in response to Q39, in the case of People's Postcode Lottery, it is already easy to unsubscribe. There is no minimum subscription period so players can stop at any time. We therefore don't have any comments in respect of the easy exiting proposal.

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

Yes

Please expand on your answer here.:

We would suggest that subscriptions for charities (including subscriptions for charity lotteries) should either be removed from the definition of "subscription" for the purposes of the proposed legislation, or feature as a specific exemption.

Subscriptions to charities are obviously different from conventional subscriptions, where goods or services are being supplied to a consumer. Even where someone who subscribes to a charity receives something in return for their subscription (such as membership to a wildlife centre), it seems likely this is influenced by the charitable destination of the money resulting from the subscription.

In relation to lotteries, section 98 of the Gambling Act 2005 expressly states a lottery operating licence can only be issued to one of the following three bodies:-

- The first is "a non-commercial society". This is defined in section 19 of that Act as "a society established and conducted (a) for charitable purposes, (b) for the purpose of enabling participation in, or of supporting, sport, athletics or a cultural activity, or (c) for any other non-commercial purpose other than that of private gain."
- The second is a local authority.
- The third is as an external lottery manager acting on behalf of a "non-commercial society" or local authority.

Subscriptions to lotteries are therefore inextricably linked to raising funds for charities and good causes. Section 99 of the Gambling Act 2005 also specifies a minimum percentage from the proceeds of a lottery which must go back to the good cause or local authority behind the lottery. As evidenced in our responses to questions 31, 37, and 38, because subscription lotteries, and subscriptions to charities generally, differ from a conventional subscription model, the proposed changes do not fit well with them, and they should therefore be exempt from the proposals.

If subscriptions to charities (including subscriptions for charity lotteries) were included within the proposed changes, it seems likely this would adversely affect the amount raised by such charities, at a time when they need such funding more than ever.

An example of the scale of funds raised by subscription lotteries for charities and good causes is that in 2020, People's Postcode Lottery (an external lottery manager) raised £156 million for charities and good causes through its subscription lottery model, and has raised over £750 million for charities and good causes to date. We are unaware how many charities directly use subscriptions in order to raise funds for their good causes (for example by people subscribing to give them a monthly payment, subscribing for membership to their charity, running their own lotteries or other subscriptions such as those mentioned at <https://www.thirdsector.co.uk/rise-subscription-services-charities-thinking-inside-box/fundraising/article/1670753>), but the figures mentioned hopefully give some idea of the large scale of funds involved.

The introduction to this question states "Our policy aims to minimise consumer harm and detriment. Government does not intend for the requirements proposed to potentially interfere with the health or welfare of consumers. Government proposes to exclude any contracts for goods, services, and digital content from the proposals, where an interruption in supply could result in serious harm to consumer welfare in principle." The consultation does not suggest that subscriptions to charities and charity lotteries are causing consumer harm or detriment. The consultation seems concerned with a conventional subscription model relating to the supply of goods or services, rather than subscriptions raising funds for charities, where those subscribing may well be doing so in order to help raise funds for charities and good causes. Including the charity sector within the ambit of these proposals would seem likely to interfere with the health and welfare of consumers, with less money being raised for charity to support health and wellbeing. If the charity sector is included, as well as resulting in less funds being raised for charity, the proposals are also likely to increase the administration costs of such charities (for example in sending out reminder correspondence and in amending online systems), such that money which could otherwise be spent on the good causes supported by the charities needs to be spent on administration instead.

Given the consultation does not suggest the present subscription model supporting charities is causing consumer harm or detriment, it would not seem proportionate or evidence based to introduce new requirements in respect of subscriptions for this sector. If, once the new requirements were introduced for other sectors, it was found that the subscription model within the charities sector was also problematic, at that stage relevant requirements could be introduced to remedy whatever harms were found to be arising. It would however seem an unnecessary and dangerous step to at this point introduce new subscription requirements on the charity sector, with the likely effect of reducing the sums they raise through subscriptions and increasing the funds such charities must spend on administration, and thereby reducing the crucial support such charities provide to health and wellbeing of consumers. To avoid an unintended consequence of these subscription proposals being a reduction in the amounts raised by charities for their good works, we would suggest subscriptions for charities (including subscriptions for charity lotteries) should feature as a specific exemption.

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.: