

## Response ID ANON-N31T-5NC6-2

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:  
Skyscanner Limited

Are you happy for your response to be published?

Yes, but without identifying information

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.:

As more and more of UK economic activity takes place online, we believe that it is vital the CMA gives sufficient weight and consideration to the digital economy when assessing the state of competition in the UK. This could include the market share of the biggest tech platforms compared to smaller rivals, the prices charged for digital advertising, including search and display, and a comparison of the number of page visits and transactions between online businesses and the biggest platform, where these offer the same products and services. These could all indicate the level of competition online, in particular the extent to which the biggest platforms are using their status as gatekeepers to limit the visibility of and access to smaller rivals.

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?

Yes

Please expand on your answer here.:

This power will ensure that any state of competition reports provide an accurate reflection of competition. These should be targeted and avoid placing undue burdens on companies, however, particularly whilst they are trying to recover from the pandemic and adapt to Brexit. Granting the CMA such a power makes it less necessary for the new Digital Markets Unit (DMU) to have a duty to monitor digital markets more broadly. If both proposals are followed, they must be designed in such a way that avoids duplication and therefore undue burdens on businesses that are, ultimately, not responsible for reduced competition.

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

Maybe

Please expand on your answer here.:

We do not have strong views either way on this question, although we absolutely do agree that strategic steers from the Government should remain non-binding and the CMA should continue to have the power to set its operational priorities outside of the strategic steer. This would ensure that competition policy remains non-politicised. There may also be a risk that more regular steers than the current once-per-Parliament could lead to less clarity for stakeholders regarding the direction of competition policy and distract the CMA from its day-to-day work.

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

Yes

Please expand on your answer here.:

We broadly welcome reforms that seek to make the CMA market inquiries process quicker and more effective, and note that in the past the CMA has seemed reluctant to make use of these powers. Enabling the CMA to impose remedies at the end of the market study process, thereby significantly shortening the timeline for inquiries, would likely make the CMA more willing to launch market inquiries and would also enable the speedier resolution of cases, to the benefit of all market participants. It would be important for the CMA to ensure that, given the shorter timeline, any remedies are well considered and do not impose unworkable burdens on smaller companies, but enabling the CMA to extend the timeline for an additional three or six months when remedies are proposed should help to avoid that outcome.

We also agree that it is most appropriate for the CMA Board to act as the responsible decision-maker when deciding whether to impose remedies, as this would avoid the need to appoint an independent panel (and thereby taking longer) and would ensure the same individuals decide whether to impose remedies or proceed to a market investigation.

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

Maybe

Please expand on your answer here.:

We recognise many of the attractions of a single market inquiry tool, such as reducing inefficiencies in the current two-stage process and allowing the CMA to alter inquiry timelines more flexibly. However, the first proposal to enable most remedies to be imposed at the end of a market study, without the need to launch a market investigation unless it is particularly complex and separation remedies may be required, goes some way to addressing the issues identified with the current two-stage process. It also has the benefit of being a well-known tool to market participants and would likely be able to be implemented more quickly than a completely new tool.

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

Yes

Please expand on your answer here.:

We believe that, given the timelines involved in market inquiries, enabling the CMA to impose interim measures from the beginning of a market inquiry would make such tools more effective. This is because markets, particularly digital ones, move so quickly that significant and irreversible harm to individuals or other businesses can be done by the time the CMA has issued its final report finding that there are adverse effects on competition. This makes any remedies less effective.

Enabling the CMA to impose interim measures would also bring the market inquiries process more into line with the proposed digital competition regime, where interim measures will be available in code breach and PCI investigations.

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

Yes

Please expand on your answer here.:

Allowing the CMA to accept binding commitments would enable a quicker resolution to the market inquiry process, to the benefit of all market participants. As rightly highlighted in the consultation, however, safeguards should ensure that commitments cannot be used to avoid possibly more effective remedies at the end of the process. Allowing the CMA to 'stop the clock' on investigations whilst commitments are considered, when combined with the ability to impose interim measures, should ensure that any commitments offered are serious and likely to address the CMA's concerns sufficiently.

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

Yes

Please expand on your answer here.:

We fully support the proposals to improve remedies. Enabling the CMA to test proposed remedies reduces the likelihood that they will have unintended consequences once they are implemented, as will the power to periodically review remedies post-implementation. The ability to review and alter remedies will also substantially improve their effectiveness, particularly in fast-moving markets, and avoid the need to restart market inquiries. Such reforms would also better align with the proposed approach in the new digital competition regime, providing greater regulatory coherence.

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

Please respond here.:

This is something we would not be well placed to comment on.

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.:

This is something we would not be well placed to comment on.

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.:

This is something we would not be well placed to comment on.

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

Please respond here.:

This is something we would not be well placed to comment on.

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

Yes

Please expand on your answer here.:

We welcome the proposed changes to the CMA Panel and agree that they would likely lead to faster decision-making to the benefit of all stakeholders. Whilst quicker decision-making could increase the risk of unintended consequences when deciding on remedies, for example, we believe that this should be mitigated by some of the other proposals in the consultation document, such as the ability to regularly review and amend remedies.

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?

Yes

Please expand on your answer here.:

Updating the jurisdictional requirements of the Chapter 1 and Chapter II prohibitions to allow the CMA to tackle anti-competitive behaviour that takes place outside its jurisdiction but is still likely to impact the UK's consumers or businesses would bring the UK regime into line with the US and the EU, ensuring greater international regulatory coherence. It would also support more effective pro-competitive regulation of the big tech platforms, since these firms operate around the world and their behaviour and decisions in one geographical market inevitably affect the UK.

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.:

This is something we would not be well placed to comment on.

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.:

This is something we would not be well placed to comment on.

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?

Yes

Please expand on your answer here.:

The reforms under consideration would help enhancing the effectiveness of the CMA's tools to identify and prioritise investigations.

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?

Yes

Please expand on your answer here.:

As in other areas of the UK's competition regime, a greater ability to impose interim measures is vital to ensure its effectiveness as innovation takes place at an ever greater pace and markets change. We believe that both the proposed changes would make the CMA's interim measures tool in Competition Act investigations more effective, by making decision-making and implementation quicker.

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?

Yes

Please expand on your answer here.:

Broadening the power to interview individuals as part of Competition Act investigations to cover people not directly connected to the company under investigation would bring the power into line with those that exist under merger and market investigations, improving coherence. Given the severity of the issues covered by Competition Act investigations, it is also appropriate. This power, along with strengthened obligations not to destroy evidence which a person knows is relevant to a Competition Act investigation and new seize-and-sift powers for domestic premises, should also make investigations more effective by improving compliance and cooperation, and therefore lead to better outcomes.

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?

Yes

Please expand on your answer here.:

We believe that it is likely the proposed Early Resolution Agreements will help bring Chapter II cases to a close more efficiently, by enabling investigations to be closed quickly without the need to admit to an infringement. Whilst it is important that any infringements are properly sanctioned, we believe that the requirement to accept certain factual matters on the part of the company subject to investigation and for the CMA to be satisfied it has reasonable grounds for believing an infringement has occurred strikes a sufficient balance. The benefits of swift resolutions to investigations outweigh the disadvantages of a somewhat lessened deterrence.

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.:

This is something we would not be well placed to comment on.

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.:

This is something we would not be well placed to comment on.

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.:

This is something we would not be well placed to comment on.

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

Please respond here.:

We're comfortable with the existing level of judicial scrutiny for decisions by the CMA in Competition Act investigations, provided that interim measures can be introduced swiftly.

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.:

The standards of ordinary judicial review are the most appropriate for decisions by the CMA in relation to non-compliance with investigative and enforcement powers. This will lead to less prolonged appeals, thereby protecting the speed of investigations and the effectiveness of remedies. On the latter point, ensuring that remedies are not subject to protracted appeals will also reduce uncertainty among stakeholders.

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.:

This is something we would not be well placed to comment on.

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?

Yes

Please expand on your answer here.:

We believe that it is vital for the future of the UK's economy that its competition regime is not toothless, to incentivise compliance with requests and therefore the quicker resolution of issues and investigations. The proposed penalty caps are welcome and would bring the UK closer into line with those imposed by other European countries and would particularly increase the incentive for the biggest global businesses to comply with investigations, rather than obstruct them. We also welcome extending the current prohibition against the provision of false or misleading information to the CMA and the proposed civil fining regime to cover the provision of information to the CMA in response to voluntary information requests. This will ensure greater coherence regarding the CMA's powers, given the prohibition applies to most of the CMA's other functions, and would bolster some of the other proposed changes in this consultation document, such as regular state of competition reports, by ensuring all information supplied to the CMA is accurate.

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?

Yes

Please expand on your answer here.:

We support proposals to ensure that the CMA can effectively enforce the UK's competition regime. Increasing the penalty caps will ensure that the biggest companies, which the CMA will now have greater responsibility for regulating, comply with the CMA's directions, orders, undertakings, and commitments.

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.:

Whilst we have limited specialist knowledge regarding specific conditions that should apply to the CMA's use of investigative assistance powers, we want to place on record that we fully support any efforts to improve collaboration between competition authorities, as this will improve the quality of investigations and enforcement against the biggest global companies. It is also likely to lead to a more coherent international competition landscape, improving outcomes for UK businesses such as ours that operate internationally. A condition of reciprocity for the use of investigative assistance powers would be a sensible approach to encouraging such collaboration.

## 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?

Not Answered

Please expand on your answer here.:

This is something we would not be well placed to comment on.

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

Please respond here.:

This is something we would not be well placed to comment on.

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.:

This is something we would not be well placed to comment on.

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.:

This is something we would not be well placed to comment on.

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.:

This is something we would not be well placed to comment on.

35 How would the reminder requirement impact traders?

Please respond here.:

This is something we would not be well placed to comment on.

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.:

This is something we would not be well placed to comment on.

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

Please respond here.:

This is something we would not be well placed to comment on.

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

Please respond here.:

This is something we would not be well placed to comment on.

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.:

This is something we would not be well placed to comment on.

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.:

This is something we would not be well placed to comment on.

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 agree that contracts for the supply of financial products such as insurance should be excluded from the proposed changes to subscription contracts, because an unintended interruption in supply could lead to serious detriment to the consumer, as indicated. The risk would be particularly acute at the moment in the case of travel insurance, given the health situation can change so quickly when abroad and the greater possibility of booking and flight cancellations or changes.

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.:

This is something we would not be well placed to comment on.

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.:

This is something we would not be well placed to comment on.

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.:

This is something we would not be well placed to comment on.

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.:

This is something we would not be well placed to comment on.

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?

No

Please expand on your answer here.:

The control of choice architecture, browsers, search engines and app stores is so concentrated among a few of the biggest technology firms, and many of their actions are so opaque, that we believe it is highly unlikely that consumers are aware of the extent to which businesses seek to influence their choice. A clear example of this is the practice of self-preferencing, whereby those who operate search engines (particularly Google) place their own products and services higher up in search results than those businesses offering the same products or services. As there is no reference to such a practice in the search result page, most consumers are likely to believe that the search order is an organic result reflecting the most suitable answers.

We believe that this is absolutely a concern that consumers would want to be addressed, as it ultimately reduces their choice by directing them to a particular good or service. Multiple surveys have shown that consumers are likely to stick with default settings or click on a limited set of links they see at the top of their search results. This makes such practices particularly damaging to consumer welfare, as they are less likely to ultimately choose the most suitable product or service for their needs.

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?

Yes

Please expand on your answer here.:

We strongly believe that regulators and government should do more to address these issues, particularly paid-for search results that are not labelled accordingly. This practice can lead to consumers making decisions that are not, in fact, the most suitable for them because they mistakenly believe that the results are completely organic and that the search ranking reflects the most suitable product or service for their query. This harms consumers, as set out in our response to Q46, because they may be less likely to scroll down and find a more suitable result. It also harms the businesses that rely on

providers of search engines, which in the digital economy is the vast majority, to reach consumers, as it unfairly reduces the number of visits to their page.

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?

Yes

Please expand on your answer here.:

The current implementation of PSD2 (the Payment Services Regulations 2017) creates a degree of confusion around the ability for retailers to legitimately discount certain types of payment method, whereby genuine discounts are often lost as a result of the need to avoid a perceived surcharge on other forms of payment. We are concerned that this might lead to higher prices being paid overall, as a result of the unwillingness of retailers to take the risk of discounting certain payment methods. This could potentially be clarified.

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

Not Answered

Please expand on your answer here.:

This is something we would not be well placed to comment on.

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.:

This is something we would not be well placed to comment on.

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.:

This is something we would not be well placed to comment on.

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

Please respond here.:

This is something we would not be well placed to comment on.

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

Please respond here.:

This is something we would not be well placed to comment on.

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.:

This is something we would not be well placed to comment on.

## 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?

Not Answered

Please expand on your answer here.:



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?

Not Answered

Please expand on your answer here.:

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?

Not Answered

Please expand on your answer here.:

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.:

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.:

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.:

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.:

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

Please respond here.:

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?

Not Answered

Please expand on your answer here.:

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.:

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

Please respond here.:

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.:

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.:

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.:

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?

Not Answered

Please expand on your answer here.: