



# Reforming Competition and Consumer Policy

Response to the BEIS Consultation

October 2021

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## Executive summary

The Government is proposing to make wide-ranging changes to the UK's competition and consumer regulatory frameworks. We consider that these proposed changes are unnecessary and/or disproportionate, and should not be pursued. This submission focuses on the Government's proposals relating to subscription contracts. In general, the proposals set out in the consultation fail to have regard to two critical contextual issues.

First, they stand in stark contrast to a range of Government initiatives which recognise the burdens that untargeted and disproportionate regulation imposes on firms and the drag this creates on investment, jobs, innovation and productivity growth, which are all critical to the future economic success of the UK. These include the Government's vision for Brexit, its levelling-up agenda and its Build Back Better plan where the Government presents the UK's departure from the EU as *"an opportunity to forge a new path as a fully sovereign trading nation, doing things differently, more nimbly and better"*<sup>1</sup> underpinning economic growth and greater innovation.

Second, they fail to recognise the enormous, devastating impacts of the Covid crisis on UK firms and the need for them to focus their attention and investment on recovery from that crisis. Now is the wrong time to be adding new layers of regulation of the type proposed in the consultation.

### Proposals for new regulation of subscription services

As a large, successful UK subscription business, we believe that we are well placed to comment on the proposals set out in the consultation in relation to subscription services.

The consultation rightly notes that subscription models can be beneficial to both businesses and consumers. These benefits are a key reason for the significant growth in the subscription sector over time. We also agree that the subscription sector presents a number of potential challenges for consumers. The key question, however, is whether those challenges warrant the types of wide-ranging regulation proposed in the consultation. We do not consider that this is the case.

The proposals lack clear justification. A range of reasons are given for considering that new regulation of subscription contracts is required, but as a whole their rationale is unclear. This is a poor basis for significant new proposals for regulation or legislation, which should be evidence-based and targeted at clearly identified problems.

The consultation fails to have adequate regard to existing mechanisms to address any consumer issues identified, including existing legislation and market mechanisms:

- The consultation gives inadequate attention to existing UK consumer law – which is extensive and effective – and fails to explain why this cannot be more robustly enforced to address consumer issues that arise in relation to subscription services.

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<sup>1</sup> Build Back Better plan, March 2021 – <https://www.gov.uk/government/publications/build-back-better-our-plan-for-growth>.

- It also fails to have adequate regard to the powerful economic incentives, operating on both consumers and businesses, that counteract the types of issues identified in the consultation. Above all, it fails to recognise the strong incentives that firms' brands and reputations, which are key facets of competition in modern economies, create for delivering positive consumer outcomes in relation to subscription services.

Successful subscription businesses such as Sky understand that long-term success depends on building long-term relationships with customers, via both the range and quality of services they deliver, but, equally importantly, via customer service. Those that make it difficult to cancel a contract, or seek to exploit their subscribers, will ultimately suffer harm to their reputation and brand, damaging their competitiveness.

The evaluation of the potential costs and benefits of the proposals is also insufficient given their potential scope and impact. Evaluation of the potential benefits is highly dependent on numerous unsupported assumptions and unconvincing consumer survey data. The estimated costs of implementing and administering the proposed new regulation are significantly underestimated. [§<] Yet the estimated present value of the costs to *all firms, across the entire UK economy*, in relation to the implementation of these measures including training, IT costs, implementing new procedures and changing terms and conditions is only £16m.

Moreover, the consultation does not contain any analysis of the wider adverse consequences that would follow as a result of the Government's proposals. These include the potential for lower take-up of new services, increased up-front costs for consumers and more difficult market entry and expansion which are likely to occur from any rebalancing of prices stemming from the proposals across what is recognised to be an important and growing section of the economy.

### Avoiding triple regulation of firms in regulated sectors

We welcome the recognition in the consultation that firms operating in sectors with sector-specific economic regulation, such as energy, financial services and telecoms, already operate under two layers of consumer regulation: general consumer law and sector-specific consumer regulation. If these proposals are taken forward (and we do not consider that they should be) such sectors must be clearly and unambiguously excluded from them.

### Focusing on key issues

It is incumbent for any proposals for new regulation to be targeted only on clearly identified areas of harm. Potential consumer harms associated with subscription contracts are, plainly, determined by the duration of those contracts. For example, contracts of one or two years' duration that renew for another fixed term of a similar duration – particularly if contracts auto-renew or consumers are given a short window to reject renewal – clearly give rise to the potential for greater consumer detriment than monthly contracts, or contracts with an initial minimum commitment (required for firms to recover customer acquisition costs) that move to a rolling monthly. The potential for consumer harm is fundamentally different in these two cases. Sky considers that if these proposals are taken forward they should be more tightly focused on the use of long-term contracts that renew for an additional fixed term.

In Sky's view, the case for the proposed changes has not been adequately considered, and the potential for new regulation of this type to cause more harm than good has been underestimated. Sky urges the Government to revisit the evidence and cost-benefit analysis for the subscription contracts proposals, which will swiftly demonstrate that they are unjustified.

### **The proposed changes to competition law and consumer law enforcement**

In relation to the Government's other proposals, we consider that the current regime is performing far better than the consultation suggests. While improvements can, undoubtedly, be made these need to be proportionate and backed by clear evidence. Regulatory predictability, safeguarded by a meaningful appeals regime is the key to encouraging both long-term investment and enabling innovation.

Taken together, Sky considers that there is no case to make the types of changes to competition and consumer law set out in the consultation, particularly at this point in time.

## Introduction

Sky welcomes the opportunity to comment on BEIS's Reforming Competition and Consumer Policy consultation published 20 July 2021. This submission focuses on the Government's proposals relating to subscription contracts (Chapter 2 of the Consultation). We provide below some detailed comments on these proposals.

We recognise that Government's thinking remains at a very early stage - it is imperative that Government continues to consult broadly with stakeholders across industry and the legal community throughout the forthcoming legislative process, to ensure that any final proposals are robustly evidenced, proportionate and designed to target only those areas where there is a real need to address harm.

Sky has serious concerns with the current shape of the Government's proposals regarding subscription contracts. In our view, there is no case for introducing new regulation here. The Government's proposals are badly timed and run contrary to the Government's vision of the UK economy post-Brexit, including the levelling up agenda and Build Back Better plan. There are also a number of significant flaws in the evidence used to justify the possible interventions, set out in the accompanying Subscriptions regulations – Impact Assessment. The benefits of the changes are woefully uncertain, and the Government has also significantly underestimated the costs to business of implementing and complying with new regulation in this area.<sup>2</sup>

Whilst we recognise the significant benefits to consumers and businesses delivered by the subscription contract model, we also agree that the subscription sector presents a number of potential challenges for consumers. The key question, however, is whether those challenges warrant the types of wide-ranging regulation proposed in the Consultation. For the reasons set out below, we do not consider that this is the case.

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<sup>2</sup> We note in this regard the findings of the recent report from the House of Commons Public Accounts Committee, which was critical of the current approach to calculating the costs and benefits of regulation, and recommended that *"the Department [BEIS] should consult with regulatory bodies and wider stakeholders on how to ensure robust analysis of regulatory costs and benefits is built into regulatory policy design and evaluation. Furthermore it should include proposals to better reflect the impact of regulation in promoting competition and innovation."* Principles of effective regulation, Sixteenth Report of Session 2021–22, published 15 September 2021, available at: <https://committees.parliament.uk/publications/7292/documents/76394/default/>.

## The Consultation fails to have regard to two critical contextual issues – the opportunities presented by Brexit and the Covid-19 recovery

The UK is starting from a strong position on consumer protection, particularly when compared to other jurisdictions around the world. The existing consumer rights framework in the UK is robust and provides high levels of protection for consumers.

We welcome and agree with the Government's finding that:

*"Overall, [the consumer protection] legal framework is still working well: the UK has one of the strongest consumer protection regimes, with strong advocates for consumer interest and well-developed advice services working alongside a comprehensive package of statutory consumer rights."<sup>3</sup>*

Against this backdrop, we acknowledge that several drivers are pushing the Government to review the UK's current consumer rights regime, including the increase in online transactions, the wider context of the Covid-19 pandemic and, of course, the UK's exit from the EU.

However, we are concerned that the Government's proposals are misjudged, for the reasons described below.

### The Government's proposals run contrary to their vision post-Brexit, including the levelling up agenda and Build Back Better plan

Sky recognises and values the importance of the key elements of Government's 'Build Back Better' plan – of well-functioning, competitive markets to drive economic growth and deliver good outcomes for consumers.

The Government presents the UK's departure from the EU as *"an opportunity to forge a new path as a fully sovereign trading nation, doing things differently, more nimbly and better"* underpinning economic growth and greater innovation. However, this nimbleness can only be achieved if the regulatory burden on business is held carefully and firmly in check by Government.

Government has itself committed to ease this regulatory burden and to operate with a bias against unnecessary new regulation. For example, the Government recognised the risks of regulatory red-tape, particularly against the backdrop of recovery following the Covid-19 pandemic and the effects of Brexit, in *"Build Back Better"*, the Government's plan for growth, published on 3 March 2021.<sup>4</sup> Government outlines four objectives for the UK's approach to regulatory reform:

*"The UK Government will maximise new freedoms and ensure regulations support science and innovation, enable business to flourish, and boost growth whilst maintaining our high standards, by:*

- *using regulation to unlock cutting-edge technologies such as drones and autonomous vehicles;*
- *modernising our approach so that we deliver sophisticated policymaking that benefits citizens and the economy;*

<sup>3</sup> Consultation, paragraph 2.1.

<sup>4</sup> See footnote 1.

- ***easing the regulatory compliance red tape burden on business;***
- *hard-wiring competition principles into regulatory decision-making.* (emphasis added)

We firmly support Government's stated objectives of reducing the burden of regulation to support innovation and competition. We note that, alongside the Consultation, Government has also published its consultation "*Reforming the Framework for Better Regulation*", published on 22 July 2021 (the "Better Regulation Consultation"), to which Sky has responded separately.

In the Better Regulation Consultation, Government states that:

*"to achieve these objectives [for the UK's approach to regulatory reform] Government will base its approach to regulation on five principles.*

1. ***"A sovereign approach:*** *we will use our new freedoms to follow a distinctive approach based on UK law, protected by independent UK regulators, and designed to strengthen UK markets.*
2. ***Leading from the front:*** *we will focus on the future, shaping and supporting the development of new technologies, and creating new markets. We will use our new Reforming the Framework for Better Regulation 4 freedom to act quickly and nimbly, and we will pursue high-quality regulation because it leads to better markets.*
3. ***Proportionality: Where markets achieve the best outcomes, we will let them move freely and dynamically. We will pursue non-regulatory options where we can.*** *When strong rules are required to achieve the best outcomes, we will act decisively to put them in place and enforce them vigorously.*
4. ***Recognising what works:*** *we will thoroughly analyse our interventions based on the outcomes they produce in the real world, and where regulation does not achieve its objectives or does so at unacceptable cost, we will ensure it is revised or removed.*
5. ***Setting high standards at home and globally:*** *we will set high standards at home and engage in robust regulatory diplomacy across the world, leading in multilateral settings, influencing the decisions of others, and helping to solve problems that require a global approach" (emphasis added)*

The Government's new proposals in the Consultation, specifically the untargeted and disproportionate subscription contracts proposals, stand in stark contrast to the Government's objectives outlined in the Build Back Better plan and the five principles in the Better Regulation Consultation. Imposing a huge additional cost on businesses trying to compete with global players by increasing the regulatory burden and introducing greater regulatory uncertainty will result in harder investment decisions, hinder growth and lead to a reduction in innovation. Ultimately, pursuing these proposals may have a serious impact on the future economic success of the UK.

As Government acknowledges, steps to introduce any new policies in this area require a careful balancing between limiting harm to consumers, while maintaining



flexibility for businesses to grow and innovate.<sup>5</sup> Therefore, Government should only intervene where there is clear evidence of consumer harm that can be addressed by specific and targeted measures.

### Government's proposals regarding subscription contracts are badly timed

The Government's proposals fail to recognise the enormous, devastating impacts of the Covid-19 pandemic on UK firms.

Rather than viewing the UK's Covid-19 recovery as a reason to push ahead with wide-ranging amendments to current regulation, in our view, it ought to temper the Government's desire to act, making it all the more important to avoid unnecessary interventions at this time.

Businesses need to focus their attention and investment on post pandemic recovery. The additional burden placed on businesses to develop, implement and continue to deliver new processes to comply with unnecessary and disproportionate regulatory requirements will drive up costs for UK businesses, at a time when they are ill-prepared to absorb them. These costs will ultimately be borne by all UK consumers.

Pushing ahead with adding unnecessary layers of regulation in this area, particularly at this sensitive time, would carry significant risks to innovation, investment and ultimately the economic prosperity of the UK.

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<sup>5</sup> Consultation, paragraph 2.6.

## There is no case for new regulation of subscription contracts

The consumer rights proposals are neither necessary nor a proportionate response to the narrow set of problems that Government has identified. Sky has particularly serious concerns regarding the proposed wholesale changes to the operation of subscription contracts.

### The case for new regulation has not been made and the supporting evidence is poor

Whilst we recognise the significant benefits to consumers and businesses delivered by the subscription contract model, we also agree that the subscription sector presents a number of potential challenges for consumers. The key question, however, is whether those challenges warrant the types of wide-ranging regulation proposed in the Consultation. For the reasons set out below, we do not consider that this is the case:

- First, the Government erroneously relies on survey evidence gathered for a particular purpose, from a targeted section of consumers and relating to a narrow set of products, to justify economy-wide reforms. Furthermore, that survey data, in some cases, is old, dating back to 2016.
- Second, the Consultation fails to have adequate regard to current mechanisms to address any consumer issues identified, including the existing body of consumer law.
- Third, the Government must consider the existing regulatory burden on businesses already subject to scrutiny from economic regulators.
- Fourth, the Consultation fails to consider and assess how a competitive and well-functioning market can also provide incentives on businesses to counteract the types of issues identified in the Consultation, including brand and reputation.

Finally, the cost-benefit analysis is deeply flawed. Sky considers in more detail the flaws in the Government's Subscriptions Regulation - Impact Assessment ("IA"), and its analysis of the benefits and costs of implementing the proposals for intervention, in the sections that follow.

Considered together, it is clear that there is simply not sufficient evidence to justify new regulatory intervention for subscription contracts. This is a poor basis for significant new proposals for regulation or legislation, which should be evidence-based and targeted at clearly identified problems.

Given that there is currently insufficient evidence to support the case for wide-scale intervention across the UK economy, as a first step, Government must first revisit the question of what, if any, harm is caused by subscription contracts. As it stands, Government has not set out clearly the issue that it is trying to address and protect consumers from.

## The Impact Assessment attempts to justify economy-wide intervention on the basis of data which supports more limited or different interventions

There are significant limitations in the evidence used in both the Consultation and the IA published alongside the Consultation, to justify intervention which does not withstand closer scrutiny.

For instance, in setting out the overall size of the perceived problem, the IA relies upon research by Citizens Advice that 84% of respondents to its survey about subscription traps were not aware that they had agreed to a subscription at the point of purchase. On its face, this seems to be compelling evidence of harm. However, Government's analysis is deeply flawed.

A closer reading of the Citizens Advice report clearly shows that this survey was focussed upon deceptive practices which are "situations where a consumer is tricked into agreeing to a subscription through the advertising of a "free trial" or reduced price offer."<sup>6</sup> (emphasis added). Further, it was targeted at these customers rather than a random representative sample: "This survey was targeted at consumers who had encountered problems with subscription traps and was advertised on Citizens Advice's and Citizens Advice Scotland's websites and advice pages, in-house social media, and the Money Saving Expert weekly email."

The Citizens Advice report goes on to discuss various unscrupulous practices and the (mis)use of Continuous Payment Authorities "to take as much money as they want from consumers' accounts whenever they like without prior notice."

It is hardly surprising, therefore, that a report on deceptive practices where unscrupulous traders are deliberately trying to hide or obscure the fact that consumers are signing up to a subscription, and when respondents to that survey are self-selecting, shows that a high percentage report that they have unwittingly entered into a subscription contract. But it is equally evident that this is a very different issue from the Consultation's wider discussion of subscription services provided by all types of companies, including reputable ones. The fact that 43% of the subscription traps identified by the Citizens Advice report are made up of slimming products and face/skin creams should be sufficient to demonstrate how different this is from the generalised conclusion that the IA attempts to draw. What is more, it is clear that such deceptive practices can be addressed by existing laws, a point made clearly in the Citizens Advice report's main findings.<sup>7</sup>

Similarly, the IA relies upon 'problematic' practices "including unclear terms and misleading information" identified by the European Commission's 2016 report "Misleading "free" trials and subscription traps for consumers in the EU" (the "EU 2016 report"). However, the IA fails to acknowledge that the EU 2016 report was aimed at ... "deceptive commercial practices. These misleading free trials trap the consumer into subscriptions to purchase the tested product or services."<sup>8</sup> Again, health supplements and cosmetics were found to have the highest incidence of 'problematic' practices

<sup>6</sup> Citizens Advice, *Locked in: Consumer issues with subscription services 2016* at page 2. Available here: <https://www.citizensadvice.org.uk/about-us/our-work/policy/policy-research-topics/consumer-policy-research/consumer-policy-research/locked-in-consumer-issues-with-subscription-traps/>.

<sup>7</sup> "Terms and conditions are frequently not clearly and prominently displayed and key information is often hidden. This means that many subscription trap agreements may be in breach of the Consumer Contract (Information, Cancellation and Additional Charges) Regulations 2013 and the Consumer Protection from Unfair Trading Practices Regulations 2008", at page 3.

<sup>8</sup> Available at: [https://ec.europa.eu/newsroom/just/document.cfm?action=display&doc\\_id=43759](https://ec.europa.eu/newsroom/just/document.cfm?action=display&doc_id=43759).

of any category and, of these, unauthorised sharing of consumer data with third parties was the most prevalent identified practice.

Further, much of the evidence of harm offered by Government regarding subscription contracts is old. For example at paragraphs 2.11-2.12 of the Consultation the evidence is based almost entirely on research carried out by Citizens Advice, including the Locked In report, from 2016.

Government simply cannot justify economy-wide interventions on the basis of such scant evidence, which, at most supports intervention only in a narrow scenario where deceptive practices are found.

### Government fails to adequately acknowledge the ability of current consumer laws to tackle issues

The Government fails to acknowledge that the narrow problems identified in the Consultation, including deceptive practices, are likely to already constitute a breach of existing consumer law.

Existing UK consumer law is extensive and effective. As the Government acknowledges, *“the UK has one of the world’s strongest consumer protection regimes,”* and *“this legal framework is still working well.”*<sup>9</sup>

We agree. UK consumers already have a strong set of consumer rights enshrined in law. Behaviour which is deceptive or unfair is unlawful in the UK, for example under the provisions of the Consumer Contract (Information, Cancellation and Additional Charges) Regulations 2013 and the Consumer Protection from Unfair Trading Practices Regulations 2008. Further, the Consumer Rights Act 2015 already offers comprehensive protection to consumers from traders that use unfair contract terms. Government fails to explain why these existing rules cannot be more robustly enforced to address consumer issues that arise in relation to subscription services.

Clearly, to the extent that Government identifies clear evidence of consumer harm, the starting point should be to consider whether the existing consumer law regime can be used to address these. Only if the Government identifies gaps in the existing rules, should it act to introduce new measures and even then, where there is clear and compelling evidence that the specific problem can only be addressed in this way.

### Government must avoid adding to the regulatory burden of firms who are already subject to oversight by economic regulators

The general consumer protection regime is supplemented in specific sectors, including energy, financial services and communications, by sector-specific legal requirements. At a minimum, Government should not add to the regulatory costs of firms operating in these sectors.

In the telecoms sector, Ofcom has been particularly active in consumer policy in recent years, including implementing the new consumer protection measures from the European Electronic Communications Code (“EECC”) (e.g. the provision of short summaries of key terms to consumers pre-contract, and end of contract and annual

<sup>9</sup> Consultation, paragraph 2.2.

best tariff notifications). There are also existing rules in relation to the automatic renewal of contracts and conditions around subscription services.<sup>10</sup>

If these proposals are taken forward (which they should not be), it will place an unacceptable regulatory burden on regulated industries. Government must avoid a situation where they introduce new competing but different regulatory rules affecting the treatment of consumers by regulated businesses. This will only create regulatory uncertainty and jeopardy around the risk of enforcement by multiple regulators, having a direct detrimental impact on innovation and growth.

This must be avoided at all costs, by clearly and unambiguously excluding regulated industries from any implemented proposals.

### **Government fails to acknowledge the strong economic incentives on firms to compete and differentiate themselves on customer service**

Successful subscription businesses such as Sky understand that long-term success depends on building long-term relationships with customers, via both the range and quality of services they deliver, but, equally importantly, via customer service. Those that make it difficult to cancel a contract, or seek to exploit their subscribers, will ultimately suffer harm to their reputation and brand, damaging their competitiveness. Government fails to acknowledge the benefits of private solutions to the issues identified in the consultation.

Firms' reputations matter - a poor reputation for customer service will discourage subscribers. If consumers have a poor experience when signing up to or trying to cancel a subscription, this will influence their future behaviour. They will abandon that provider and look elsewhere. They are also likely to share their experiences with family, friends and perhaps leave reviews on social media platforms. Therefore, firms who have opaque terms and conditions and make it hard for consumers to cancel, will lose subscribers.

Reputation and brand are key facets of competition in modern economies, and create strong incentives for delivering positive consumer outcomes in relation to subscription services. Over-regulation will damage incentives to compete in this way. Complex, prescriptive requirements must be avoided - blanket, prescriptive regulatory rules and so-called 'red-tape', can undermine a firm's nuanced, individualised assessment of their customers' needs, and hinder a firm's ability to differentiate themselves effectively on customer service.

<sup>10</sup> See, for example, Ofcom's decision to prohibit Automatically Renewable Contracts, published 13 September 2011. Available here: <https://www.ofcom.org.uk/consultations-and-statements/category-3/automatically-renewable-contracts>.

## Government's analysis of the potential benefits of any changes to the rules on subscriptions contracts is inadequate

The Government's evaluation of the potential benefits of any changes to the rules is highly dependent on numerous unsupported assumptions and further unconvincing consumer survey data.

### The Government's quantification of benefits is highly uncertain

The Government's starting point, as the IA itself states is that *"Our estimate of consumer detriment, and therefore the size of the transfer from firms to consumer is uncertain and sensitive to small changes in input variables."*<sup>11</sup>

The deficiencies in the data are then clear throughout the IA. For instance, one of its major data sources is the Forgotten Subscriptions Index (FSI) which was sponsored by and recruited respondents from the members of Topcashback.com leading to the conclusion that, as the Government acknowledges, *"the sample is not representative of all UK consumers"*.<sup>12</sup>

There are further concerns with the way that the Government treats subscription contracts that are cancelled within one month. The Government is clear that, *"[i]n line with our definition at the beginning of this section we assume that those who had wanted to cancel for less than a month did not have an unwanted subscription."* However, Table 2 and Table 3 of the IA then show that 48% and 56% of customers cancelled an 'unwanted' subscription within one month. Including this data in Table 2 and Table 3 is entirely inconsistent with the Government's stated approach. To compound the problem, it appears the IA has then attributed a value of 0.5 months of holding an unwanted subscription to these groups which, given the size of this cohort, has a material impact upon the calculation of the number of months the IA calculates unwanted subscriptions are held by consumers (versus a 0 value). This calculation then directly feeds into the overall estimate of consumer loss of £1.8bn. This is fundamentally flawed.

### Survey evidence is inherently uncertain and requires greater cross-checking

The IA acknowledges that its benefits case is most sensitive to its estimate of the percentage of 'unwanted' subscriptions.<sup>13</sup> But in addition to this acknowledged uncertainty, the IA needs to recognise the inherent overstatement of 'unwanted' subscriptions which will be driven by asking consumers ex-post with knowledge of their actual behaviour. This suffers from clear bias where people often attempt to rationalise their past behaviour.

Take first the clear statement from the IA:

*Not all cancellations are a source of consumer detriment. We define an 'unwanted subscription' as a subscription a consumer wants to cancel because they do not believe they can make use of it to gain sufficient value-for-money*

<sup>11</sup> IA pages 2-3.

<sup>12</sup> IA page 11.

<sup>13</sup> *"Throughout these calculations, we identify two key sources of uncertainty. The first is the share of subscriptions that are unwanted, where the estimates ranged from 4% to 10%, and the price of a subscription where reasonable estimates ranged from around £12 to £19."* at p. 16.

*and for which they make at least one payment after deciding they would prefer to cancel. This means a hypothetical consumer who did not use a subscription streaming service in one month, but believes they will make more use of it in the future does not have an unwanted subscription.”<sup>14</sup>*

We agree with this hypothesis. How a customer views their subscription at a particular point in time (for example, anticipating that they will visit the gym next month, even if they did not go this month) may be very different to how the customer feels in 12 months time (when they look back and realise that they haven't visited the gym all year). Further, those individuals who pay for a gym subscription but then choose not to visit may rationalise their behaviour (and the costs of the subscription they thought they would use) by responding in a survey to say they have trouble cancelling, rather than acknowledging that they did not make good use of their gym subscription. These factors may change their perception of whether they feel their subscription contract offered good value for money, in hindsight; however, it doesn't change that fact that this was not an unwanted subscription.

This demonstrates how a consumer does not have an 'unwanted' subscription if they believe they will make more use of it in the future or something that they will value highly within the subscription is coming soon and, importantly, no amount of additional information, prompts or changes to sign-up or cancellation processes will affect their behaviour. They are making a rational decision at the time to continue their subscription.

Further, Government notes of the Forgotten Subscriptions Index results that:

*“The top reason people continue to pay for subscriptions that provide little value for money is that they might use them at some point.”*

*“Another reason for hanging on to subscriptions is ‘FOMO’ – Fear of Missing Out. One in 10 avoid cancelling so they are kept in the loop about the latest shows on the likes of Netflix.”<sup>15</sup>*

In the absence of Government publishing the full FSI survey, respondents have to rely upon the details of the questions which are revealed. It is clear that in addition to asking about unwanted current subscriptions the survey also asked backward-looking questions such as *“How long have you continued to pay for a subscription you feel you do not get value for money from or/and do not use regularly?”* Setting aside the point that of the 'or/and' phrasing which means that not using regularly is not necessarily synonymous in respondent's minds with poor value for money, the IA acknowledges *“the responses to this question skew larger than responses to similar questions in YGUS and MMH, suggesting respondents interpreted this as “How long have you [ever] continued...”*

This is likely to have influenced respondents to think back about their spending habits and decide based upon what they know now about whether such subscriptions were good value.<sup>16</sup>

Consumers could just as easily be asked about whether they feel that fixing their mortgage payment (or not) represented good value for money. It is impossible for a

<sup>14</sup> IA, paragraph 45.

<sup>15</sup> <https://www.yourmoney.com/household-bills/brits-waste-494m-a-month-on-subscriptions-seven-ways-to-save-money/>.

<sup>16</sup> See also paragraph 98 which describes the survey design that filtered respondents upon current subscriptions but then asked about experiences they have ever had. It is unclear if respondents were able to revise answers to earlier questions after answering later questions.



consumer to answer such a question ex-post without taking account of the new knowledge (the actual change to interest rates or their actual usage of a subscription service over a longer period) as if they were in the former position. The significance of this flaw in the logic of both the IA and the overall consultation cannot be understated.

A similar effect can be seen in the proposal for making cancellations easier. The IA relies upon the question *“Have you ever signed up to a free trial and continued to pay for it because you couldn’t be bothered/had no time to cancel?”* and states *“couldn’t be bothered”* and *“had no time”* are good proxies for inertia and difficulty unsubscribing respectively.”<sup>17</sup> Given the comments above about why consumers retain unused subscriptions this conclusion must be questioned. ‘Couldn’t be bothered’ and ‘had no time’ could just as easily mean that a customer has made a rational choice that if they expect to gain more value from the subscription in the near future, cancelling and re-subscribing (however easy those processes are made) is simply not worth it.

We can conclude that asking customers after the fact whether they thought they got good value for money from their subscription will lead to consumers overstating the scale of any harm caused by unwanted contracts. As a result, Government’s methodology of relying on ex-post surveys to derive a figure of £1.8bn for “total annual spending on unwanted subscriptions” in the IA ignores this important facet of human behaviour, and results in a significantly over-inflated calculation of harm.

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<sup>17</sup> IA, paragraph 96.



## The costs to businesses are significantly underestimated

The costs of implementation calculations in the IA are incomplete and do not represent our real-world experience of designing, testing and implementing such changes.

Costs to businesses of familiarisation, IT (including website changes) and communication changes (including terms and conditions) for *all affected firms* across the entire economy are estimated to be £10m.<sup>18</sup> This is significantly underestimated.

Making change to terms and conditions is not a simple process. In reality, the set-up and compliance costs of the types of changes being considered are significant. [X]

These costs, which have been massively underestimated in the Consultation, will ultimately be borne by consumers across all sectors of the economy.

There are many examples where the costs to businesses of complying with new regulatory rules reach many millions of pounds, or even more. One of the most significant examples in recent years is the implementation of Open Banking which is estimated to have cost the industry £1.5bn since it was launched in 2016.<sup>19</sup>

### The estimates of implementation costs are unfeasibly low

The IA's central case for the cost of firms changing their subscription offers including familiarisation, website and communications changes and changes to terms and conditions is £10m. This is unfeasibly low and does not reflect the real-world experience of implementing these types of changes.

The IA assumes that given 6 months notice, changes to firms' terms and conditions can be made to incorporate these rules at no extra cost. That is simply wrong. The rules will need to be read, understood and 'translated' into terms and conditions creating a larger and more fundamental change than would otherwise be the case. To suggest a cost of £3029 for this work is a gross underestimate.

It also appears that no costs have been estimated for firms to implement opt-in options to be communicated and offered to consumers or for reminders to be sent. Either of these interventions would incur very large implementation costs forcing firms like Sky to re-engineer all of their online sales journeys, train all customer-facing staff and, in the case of opt-in options, rebalance pricing. For example, Sky estimates that it alone spent:

- [X]
- [X]

Implementation costs of this magnitude would be expected for these types of changes and should have been reflected in the IA.

<sup>18</sup> IA, paragraph 115.

<sup>19</sup> Fintech Direct, 'UK Finance seeks silky smooth stability for open banking', 19 June 2020 - <https://www.fintechdirect.net/2020/06/19/uk-finance-seeks-silky-smooth-stability-for-open-banking/>.

## Government's specific proposals regarding auto-cancellation of subscription contracts are ill-thought through and not justified given the significant costs involved

### Benefits to consumers are overstated and costs of implementing and monitoring are understated or not considered at all

The most egregious example in the Consultation is the proposal to require firms to cancel contracts of customers who do not use services.

Benefits to all consumers are estimated to have a NPV of £3-4million. However, the cost to *one firm alone* of having to put in place the systems required to monitor usage, identify customers that were not using a service, contact customers to see whether they wanted to continue their subscription and cancel it if not would be likely to far exceed this figure. Across all subscription-based services the costs would be an order of magnitude greater than the benefits to a very small sub-set of subscribers.

### The potential harm to consumers from unwanted auto-cancellation is not considered

The Government gives no weight to the potential consumer harm of cancelling or making it less easy to renew certain services. Under the Government's current definition of subscription services, mobile, fixed line or broadband services, home or motor insurance, breakdown cover or anti-virus software would all be caught. Sky can see no evidence of any consideration having been given to weighing up the harm of consumers inadvertently failing to have services of these types of subscriptions in such circumstances.

The policy options regarding subscription contracts include: a) requiring active consent from customers to continue with a full-priced, ongoing subscription after a reduced price trial period; and b) requiring some firms to automatically cancel subscription contracts that are unused after a period of time.

Not only has the Government failed to adequately establish the harm that it would be seeking to address with these proposals, as discussed above, but, for these two specific options the Government has also failed to consider or attempt to quantify the *disbenefit* to customers of inadvertently ceasing subscriptions.<sup>20</sup>

For some consumers, these proposals would undoubtedly lead to either the non-renewal or automatic cancellation of services that are valuable to them, and which they need even if they do not use them actively.

This is particularly problematic given the Government's nebulous definition of subscription services, which, as currently drafted, would appear to include mobile, fixed line or broadband services, home or motor insurance, breakdown cover or anti-virus software. These are valuable services to consumers, and inadvertently losing them due to either a lack of active consent to renew or an auto-cancellation trigger, could cause significant harm.

<sup>20</sup> This is particularly important, given that the size of detriment from cancelling inactive memberships is very small. Government states only 0.5% of annual detriment is a result of subscriptions not used in over one year and the share of inactive subscriptions we are applying to option 3, around 0.25% of the total annual detriment, which we estimate to be around £4m. (IA, paragraph 87).

There is a significant, but as yet unquantified by Government, risk to consumers of not being covered by these services, when they think they are.

[X]

As for changes to cancellation processes, Sky would need to see far greater specificity in the proposals to understand how much modification would be required to its existing processes. However, the IA's assumption that "*integration costs do not vary with the size of the firm*" is palpably and manifestly untrue. The cost of £400 applied to 9,600 firms leading to a total cost of **£3.8m** across the entire UK economy is hard to believe and lacking in any real-world evidence.

Consumers ought to have flexibility to manage their affairs as they see fit. There may be many reasons why they have chosen to maintain a subscription even if they do not use it regularly. The business providing the goods, services or digital content is unlikely to have any information regarding an individual's motivations for maintaining such a subscription.

Auto-cancellation is a very draconian measure that may deliver a poor experience for customers in this scenario.

### Inactive subscriptions are a very small part of any perceived problem

Irrespective of any of the criticisms made above, even on the IA's own terms it is clear that requiring firms to proactively determine and cancel 'inactive' subscriptions would address a very small proportion of the perceived harm. The IA states:

*"...we estimate a maximum of 1% of annual detriment is a result of subscriptions that have been inactive for at least 12 months, however since our surveys did not specify whether a subscription was never used or simply unwanted, and the MMH survey suggest fewer than 1% of subscriptions enter inactivity in a year, we believe this is an overestimate." (IA para 82)*

On this basis the IA concludes that the automatic cancellation of subscriptions which have been inactive for 24 months would resolve **£3m** of consumer detriment (IA para 131). Setting aside the difficulties of carving out services such as insurance, breakdown cover, data back-up and parental controls which could well be valued even if not used in 2 years and the disproportionate detriment of consumers not having cover when they believed it had renewed, it is clear from any realistic estimate of implementation costs that this intervention does not meet the most basic cost-benefit analysis.

## Government's wider assessment is simplistic, and fails to take account of a range of other factors

Government has failed to take account of a range of other factors which must be considered when assessing the case for intervention with regard to subscription contracts. These factors would lead to wider adverse consequences if the proposals are adopted, and include:

- lower take-up of new services, increased up-front costs for consumers and more difficult market entry and expansion;
- the potential loss of the positive effects of subscription services if wholesale changes are imposed; and
- the consumer harm caused by information overload.

We discuss each of these factors in detail below. In our view, each of these factors strongly indicate that the existing subscription contracts market will achieve the best outcomes for both consumers and businesses if it is given the freedom to move freely and dynamically.

### The Consultation does not contain any analysis of the wider adverse consequences that would follow as a result of the Government's proposals

Turning the business model for subscription contracts on its head, and potentially introducing proposals that severely restrict businesses from engaging in legitimate activity in relation to subscription contracts that they offer will have a range of wider adverse consequences, that the Government has simply not considered.

For example, the Government has failed to assess the potential for lower take-up of new services, increased up-front costs for consumers and more difficult market entry and expansion, all of which are likely to occur from any rebalancing of prices stemming from the proposals across what is recognised to be an important and growing section of the economy.

### The Consultation fails to take account of the positive effects of subscription services which may be lost if wholesale changes are imposed

The Consultation rightly recognises the significant benefits that subscriptions bring to consumers and businesses. These benefits are a key reason why subscription contracts are a growing part of many businesses' online offering to consumers.<sup>21</sup> As Government recognises, the use and growth of subscription contract models has been caused, in part, *"by the digitalisation of markets and a desire amongst consumers for greater choice and convenience"*.<sup>22</sup>

In an increasing online world, subscription contracts can deliver significant benefits to both consumers and businesses, which include:

For consumers:

<sup>21</sup> Consultation, paragraph 2.10.

<sup>22</sup> Consultation, paragraph 2.8.

- Convenience of access to repeating online services without the need for multiple purchases/transactions (e.g. news and magazine sites)
- Convenience and time-savings provided by “one-click” purchasing and monthly or regular subscriptions
- Spreads the cost and helps with household budgeting
- Discounted or free introductory trials enable consumers to try innovative, new products and services at low or no cost
- Minimum commitments are appropriate to enable cost recovery for up-front kit, installation or set-up costs
- Access to high value goods and services at a competitive price by spreading the cost
- Potentially boosts competition when customers switch and demand incentives (e.g. lower prices) or improved service quality

For businesses:

- Fosters long term relationship with consumer, rather than one-off transaction which builds brand recognition, trust and loyalty (i.e. reputation)
- More predictable revenue – firms offer a ‘fair trade’ to customers of discounts for revenue certainty
- Discounted or free introductory trials drive wider take-up of new services, enabling stronger competition, innovation and market entry
- By leveraging reach of digital sales, may benefit from increased audience and potentially larger customer base

For both consumers and businesses, subscription contracts allow a mutually beneficial trade of greater certainty for a lower price.

Government estimates that current practices result in consumers paying around £1.8bn for unwanted subscriptions that “*they do not think are good value for money*”<sup>23</sup>. Government’s central estimate is that £1.4bn of this would be returned to consumers.<sup>24</sup>

However, Government have not considered the impact of the ‘waterbed effect’. For example, increasing the likelihood of customers cancelling their gym memberships will increase the entry cost for taking out a gym membership. This could have serious distributional effects which have not been considered at all and require careful thought.

The IA states that current practices result in consumers paying up to £1.8bn for ‘subscriptions they do not think are good value for money’ with a central case of £848m (IA p.2). The IA goes on that:

*“firms will see reduced revenue of £365m-£1,817m as consumers end unwanted subscription contracts however consumers are likely to spend these savings on other goods services and digital content.”*

The IA acknowledges one benefit of subscription services is that “*Business benefit from increased customer loyalty and a more predictable revenue stream*”.<sup>25</sup> However, it

<sup>23</sup> IA, paragraph 71.

<sup>24</sup> IA, paragraph 160.

<sup>25</sup> IA paragraph 2.

does not go on to spell out the logical corollary of this: in effectively competitive markets these benefits are shared with consumers resulting in lower overall prices, greater competition between firms to attract new customers, and greater innovation as new services are introduced and taken up by consumers. Taking one example from the IA that 6%-10% of gym memberships are unused within a year the IA needs to recognise that these inactive members subsidise and reduce costs for more active members. Nowhere in the Consultation is this distributional impact considered.

No attempt has been made to estimate this ‘waterbed effect’ and the detrimental effects upon competition, ease of new market entry or encouraging the take up of new services if firms find it more difficult to offer free or low-cost trial periods or subscription services more generally. The IA notes:

*“Firms may change the subscriptions offer to consumers such as raising the monthly cost or offering fewer trials. These would reduce the benefit to consumers and have not been estimated” (IA p. 2)*

The IA states that the proposals could improve customer confidence in subscription models “increasing spending on subscription contract overall... [and] empowering consumers to exert additional competitive pressures... could increase productivity in the sector.”<sup>26</sup> However, if one considers the overall growth of both online and subscription services described in the main Consultation at paragraph 0.24, this suggestion directly contradicts the overwhelming evidence that subscription services are growing quickly precisely because they are highly valued by and are delivering well for consumers. Given this evidence, the risk of undermining this growth due to price rebalancing and unintended effects should be acknowledged and a more balanced approach should be taken.

## Government has failed to have regard to the consumer harm caused by information overload

The impact of any new subscription contracts proposals will also increase the amount of information provided by businesses to their customers throughout the contracting process. However, Government has failed to have regard to real-world consequences for consumers of information overload.

There is a real risk that, if the Government pursues its proposals, businesses will be required to send multiple communications to customers containing similar, yet slightly different, information. This is a particular concern in the telecoms sector, where, Ofcom has already introduced a significant body of consumer regulation measures, including end of contract notifications, annual best tariff information and, shortly, pre-contract information summaries.

Not only would these new proposals represent a further cost to business, adding to the regulatory burden of any new interventions, they also carry a significant risk of overloading customers with yet more sources of information which could actually reduce the effectiveness of the existing interventions of economic regulators.

In the telecoms sector this is not a new issue, but the Government’s proposals may make it much more acute.

<sup>26</sup> IA, page 2.

For example, the risk of information overload was a frequent concern of Ofcom when developing recent proposals for changes to consumer regulation. For example, when determining the content of end of contract and annual best tariff information notifications to consumers in its statement *"Helping consumers get better deals"*.<sup>27</sup> Ofcom stated:

*"We are mindful of the risk of requiring providers to give customers excessive amounts of information.... Our decision requires providers to outline their main options, so that customers are aware of, and can consider them. It balances the need for full information with the potential risk of overloading customers with too much detail."*<sup>28</sup>

And in its 2013 research document: *"A Review of Consumer Information Remedies"* Ofcom stated:

*"Striking the right balance between detail and succinctness of information is critical, but difficult to achieve. Too little detail and consumers may make the wrong purchasing (or other) decisions; but too much detail can have the same result, since 'information overload' can drive consumers to make hasty decisions or to postpone their decision. There is also evidence that consumers make judgements about the ultimate value of investing time in reading or understanding information: if effort in finding or understanding information is disproportionate to the (perceived) benefits, consumers are less likely to engage with it"*<sup>29</sup>

Layering on more and more regulations requiring the provision of information to consumers that they are likely to not read achieves very little and simply imposes significant compliance costs on businesses.

<sup>27</sup> Ofcom Statement, 'Helping consumers get better deals', 15 May 2019. [https://www.ofcom.org.uk/data/assets/pdf\\_file/0018/148140/statement-helping-consumers-get-better-deals.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0018/148140/statement-helping-consumers-get-better-deals.pdf).

<sup>28</sup> Ofcom Statement, 'Helping consumers get better deals', 15 May 2019, paragraph 4.94.

<sup>29</sup> Ofcom research document, 'A Review of Consumer Information Remedies', 12 March 2013. [https://www.ofcom.org.uk/data/assets/pdf\\_file/0033/91698/information-remedies.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0033/91698/information-remedies.pdf).



## Any proposals must be targeted only where there is clear evidence of consumer harm and where regulation does not currently exist to tackle the identified problems

It is incumbent for any proposals for new regulation to be targeted only on clearly identified areas of harm. Potential consumer harms associated with subscription contracts are, plainly, determined by the duration of those contracts. For example, contracts of one or two years' duration that renew for another fixed term of a similar duration – particularly if contracts auto-renew or consumers are given a short window to reject renewal – clearly give rise to the potential for greater consumer detriment than monthly contracts, or contracts with an initial minimum commitment (for example, required for firms to recover customer acquisition costs) that then become rolling monthly contracts thereafter.

Sky considers that if these proposals are taken forward they should be more tightly focused on the use of long-term contracts that renew for an additional fixed term.

### Government has failed to recognise the importance of contract duration, and distinguish between different types of contract

Government proposes the following definition of a subscription contract:

*“a contract between a consumer and trader over a period of time for the **supply of goods** (magazines, beauty products, food boxes) a **service** (gym membership, online dating site membership, web hosting) or **digital content** (digital music, eBooks, computer games).”<sup>30</sup>*

This definition is too broadly drafted.

Firstly, it is unclear whether the descriptions in brackets are intended to be examples or closed lists, but clearly if the former, the impact and applicability of any new regulations governing such contracts could be far wider than the examples provided.

Secondly, using the phrase “over a period of time” in the definition is imprecise and does not reflect the problem that Government appears to be trying to address.

In fact, most of the issues identified relate to longer-term contracts, such as 12 or 24 month (or longer) contracts. This is consistent with the IA, where Government states that:

*“Similarly, a consumer who decides to cancel a subscription and succeeds in doing so within a billing period does not have an unwanted subscription since they did not overpay.”<sup>31</sup>*

Government should acknowledge that consumer detriment associated with subscription contracts when they are short (e.g. rolling one month contracts) is unlikely to be significant.

<sup>30</sup> Consultation, paragraph 2.18, Figure 8.  
<sup>31</sup> IA, paragraph 45.



Even in relation to these types of contracts a distinction must be drawn between contracts with a minimum commitment (e.g. a 12 month minimum commitment that then rolls over monthly), and longer term contracts that roll over to new long fixed term contracts. The potential detriment from a minimum commitment period plus rolling monthly is just not present, compared to that from automatic renewal for fixed periods.

At a minimum, all of these proposals must distinguish between the very different practices of a contract with a minimum commitment (which often provides revenue certainty to defray up-front costs or subsidised hardware) followed by a rolling monthly contract where the customer is free to cancel at any time; and the auto-renewal of fixed term contracts onto a new fixed term. The potential for consumer harm is fundamentally different in these two cases and this fact should be explicitly recognised throughout the plans.

Minimum commitment period contracts must be expressly excluded from any future Government proposals in relation to subscription contracts.

## Additional regulation to address concerns regarding the exploitation of consumer behavioural biases is unnecessary

In the Consultation, Government has also identified a number of other issues related to the growth of the online economy, specifically:

- fake reviews; and
- the exploitation of consumer behavioural biases, with an apparent focus on so-called 'drip-pricing' and mis-labelled advertising in the form of paid-for search results.

In relation to fake reviews, the CMA already has the necessary tools to address this issue, both specifically in relation to online retailers breaking the law by posting fake reviews, and at a 'platform' level to address systemic aspects of fake reviews. The CMA has ongoing enforcement actions regarding fake and misleading online reviews trading on Instagram, Facebook and eBay;<sup>32</sup> paid for social media endorsements;<sup>33</sup> and fake reviews on Amazon and Google.<sup>34</sup> Government and the CMA should await the outcome of those actions before rushing into additional regulation.

Furthermore, the CMA's enforcement activity may be expected to be strengthened by the Digital Markets Unit, once established, and it is therefore all the more unnecessary and disproportionate to seek new powers and rules to address such issues.

The second issue is more complex still as Government appears to conflate two separate issues:

- Concerns regarding practices that are explicitly designed to mislead consumers into taking actions (i.e. making purchases) they would not otherwise make (so-called 'dark patterns'), and which including drip pricing and mis-labelled paid-for search results; and
- Practices which are designed to guide/influence consumers through their purchasing journey but which do not meet the necessary threshold of misleadingness.

In relation to the first category of practices, again, existing consumer protection rules are sufficient for the CMA to take action without the need for additional regulation or changes to the CPRs. Indeed the consultation effectively acknowledges this fact in the manner in which it asks in Question 47 "*whether 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?*"

The second set of practices, those based around the 'exploitation of consumer behavioural biases' are normal marketing practices used throughout retailing to help consumers find what they are looking for as efficiently as possible. As the FTC

<sup>32</sup> <https://www.gov.uk/cma-cases/fake-and-misleading-online-reviews>.

<sup>33</sup> <https://www.gov.uk/cma-cases/social-media-endorsements>.

<sup>34</sup> <https://www.gov.uk/government/news/cma-to-investigate-amazon-and-google-over-fake-reviews>.

acknowledged during its workshop on 'dark patterns' referenced in the consultation as evidence of concern,<sup>35</sup> what is being objected to is consumers being misled:

*"...if all those things [websites showing how many people are also looking at an item, or that an item is almost sold out] are actually true, then that's honest marketing. In fact, it's really useful ... to know that information. But if any of those things are lies, then it's a dark pattern."*<sup>36</sup>

No one is suggesting that a supermarket shouldn't be allowed to send customers vouchers for items it thinks they might buy based on past purchases registered via a loyalty card, nor that it is unfair to site the doughnut stall near the entrance of the shop to attract the interest of consumers. Yet all these activities seek to exploit consumer behavioural biases to the benefit of the retailer in the same way as online techniques seek to guide customers to items they might purchase and then to persuade them to finalise the sale.

What the consultation fails to appreciate is that those outcomes also benefit consumers: a fact borne out by the lack of evidence of consumer harm from such practices in the consultation.<sup>37</sup> Absent malicious intent and/or deception, such practices should not be of concern to consumers or regulators.

<sup>35</sup> See footnote 188 of the Consultation.

<sup>36</sup> See p.7 of the transcript of the FTC workshop "Bringing Dark Patterns to Light" - [https://www.ftc.gov/system/files/documents/public\\_events/1586943/ftc\\_darkpatterns\\_workshop\\_transcript.pdf](https://www.ftc.gov/system/files/documents/public_events/1586943/ftc_darkpatterns_workshop_transcript.pdf).

<sup>37</sup> For example, the Princeton study referenced at Footnote 189 [FN "Dark Patterns at Scale: Findings from a Crawl of 11K Shopping Websites" 2019] used an automated website review process to document and categorise techniques it viewed as 'dark patterns' that could lead to "unintended and potentially harmful decisions", but made no distinction between accurate and misleading techniques, and provides no basis for assessing whether harm actually occurred as a direct result of the techniques. Low stock messaging may simply mean that there is low stock. For items bought in multiples, such information could be essential to the customer making a purchase.

## Conclusion

In Sky's view, the case for the proposed changes has not been adequately considered, and the potential for new regulation of this type to cause more harm than good has been underestimated.

Sky urges the Government to revisit the evidence and cost-benefit analysis for the subscription contracts proposals, which will swiftly demonstrate that they are unjustified.

Introducing unnecessary and disproportionate new regulation will increase the regulatory burden on firms, drive up costs and chill innovation and investment. The Government acknowledges this chilling effect on investment and innovation in its Better Regulation Consultation,<sup>38</sup> and so must guard against introducing unnecessary regulation through these proposals.

As Government recognises *"markets are continually changing and adapting to new opportunities"* and these, in turn, *"bring myriad benefits to consumers in the form of better, more valuable services, and to business in the form of growth and higher profits rewarding their innovation."*<sup>39</sup>

The Government needs to test each proposed measure to ensure that they are targeted only at instances of clear consumer harm, are future-proofed and offer flexibility to businesses to innovate.

To stand the test of time, any new requirements should be focused on the outcomes that are to be delivered for consumers, rather than introducing multiple prescriptive layers of new regulatory requirements that will be quickly out of date as new innovations and technologies appear.

It is incumbent on Government to continue to encourage an environment that provides businesses with the regulatory certainty, transparency and consistency they need to make long-term, significant investments to contribute to UK economic growth, which will ultimately benefit the consumer in the long-term and contribute to well-functioning and competitive markets.

Sky

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<sup>38</sup> For example, Consultation, paragraph 1.6.  
<sup>39</sup> Consultation, paragraph 0.23.