



Department for  
Business & Trade



Department for  
Science, Innovation  
& Technology

# Digital Markets, Competition and Consumers Bill Impact Assessment

November 2023



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<b>Title:</b> Digital Markets, Competition and Consumers Bill: Summary Impact Assessment <b>IA No:</b> BEIS053(F)-22-CCP <b>RPC Reference No:</b> <b>Lead department or agency:</b> Department for Business and Trade <b>Other departments or agencies:</b> Department for Science, Innovation and Technology	<b>Impact Assessment (IA)</b>
	<b>Date:</b> 01/11/2023
	<b>Stage:</b> Final
	<b>Source of intervention:</b> Domestic
	<b>Type of measure:</b> Primary legislation
	<b>Contact for enquiries:</b> declan.obrien@businessandtrade.gov.uk
<b>Summary: Intervention and Options</b>	<b>RPC Opinion:</b>

Cost of Preferred (or more likely) Option (in 2019 prices)			
Total Net Present Social Value	Business Net Present Value	Net cost to business per year	Business Impact Target Status
£4,843.9m	-£4,845.6m	£179.7m (QRP) £118.8m (NQRP)	£898.5m

**What is the problem under consideration? Why is government action or intervention necessary?**

- Recent academic studies and the 2022 CMA State of Competition Report suggest competition may have weakened in several sectors since 2008. Evidence suggests that increasing mark-ups may also be attributable to increased pricing power amongst dominant firms.
- The dynamic nature of digital markets has changed, and those firms which once competed to gain a share in their markets are in many cases now the largest and most powerful global firms. There is a growing body of evidence that the lack of competition in activities by digital firms is often the result of specific market features (listed in the A New Pro-Competition Regime for Digital Markets IA page 12 under annex 1) that lead to entrenched market power.
- Recent evidence, including from the Consumer Protection Study 2022, shows persistent consumer detriment across some UK markets. Detriment has been evidenced to arise from unwanted subscriptions, unfair commercial practices such as fake reviews and prepayment schemes.
- Recent evidence has highlighted areas for improvement in the CMA's enforcement powers which hinder its ability to gather evidence, enforce remedies and conduct competition and consumer cases efficiently and quickly.

**What are the policy objectives of the action or intervention and the intended effects?**

- Strengthen the competition and consumer regime so that it can effectively promote competition and pro-consumer outcomes in the UK in increasingly dynamic and globalised markets.
- Establish a new digital regime, to promote competition in digital markets, for the benefit of consumers. This would be achieved through the dual action of targeting the effects of the exercise of market power, and the underlying sources of this market power (e.g. market characteristics that act as barriers to entry).
- Improve UK consumer welfare through tackling identified areas of consumer detriment.
- Ensure the competition regime is focussed on the most prominent harms, with the identified harms being remediated quickly so that the costs to businesses and consumers are minimised.

**What policy options have been considered, including any alternatives to regulation?**

**Option 1 - Preferred Option**

The preferred option includes the following package of competition policy reforms:

- Reforms to merger control (EA02)
- Reforms to market inquiries (EA02)
- Reforms to digital markets
- Stronger enforcement against unlawful anticompetitive conduct (CA98)
- Stronger investigative and enforcement powers across competition tools (cross-cutting)

The preferred option includes the following package of updates to the consumer rights and enforcement framework:

- The establishment of an administrative civil enforcement process to give stronger powers to the CMA to enforce core consumer protection laws
- New powers for the courts and the CMA to impose civil monetary penalties in response to infringements of consumer protection law or non-compliance with information requests, undertakings and orders or CMA directions
- New rights for consumers in relation to subscription contracts
- New protections for consumers in relation to Christmas savings clubs and other similar. prepayments schemes
- Supporting consumers and traders to resolve more disputes independently
- Re-write the Consumer Protection Regulations (CPRs) that form part of Retained EU Law (REUL) into UK law; unchanged in legislative effect
- A new power for the Secretary of State to tackle the exploitation of consumers through unfair commercial practices, such as fake reviews, through adding to or amending the list of automatically unfair commercial practices in the Consumer Protection from Unfair Trading Regulations 2008

**Option 2 – Do nothing**

The current competition and consumer regimes continue unchanged from the status quo. The problems outlined will persist and may increase in severity as markets become increasingly dynamic and globalised.

<b>Will the policy be reviewed?</b> N/A (specific measures to be reviewed). <b>If applicable, set review date:</b> N/A				
Is this measure likely to impact on international trade and investment?		No		
Are any of these organisations in scope?	Micro Yes	Small Yes	Medium Yes	Large Yes
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)		Traded: N/A	Non-traded: N/A	

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.*

Signed by the responsible Minister:



Date: 20/04/2023

# Summary: Analysis & Evidence

# Policy Option 1

**Description:** Competition and consumer rights reforms to create a best-in-class competition law system fit for the digital age and to ensure consumer rights, and the civil mechanisms for their enforcement on behalf of consumers, keep pace with the speed of digital innovation.

## FULL ECONOMIC ASSESSMENT

Price Base Year 2019	PV Base Year 2020	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 2,591.2	High: 7,096.9	Best Estimate: 4,843.9

COSTS (£m)	Total Transition (Constant Price)	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	254.8	326.6	3,011.0
High	460.6	1,394.0	12,453.9
Best Estimate	357.7	560.3	5,153.3

### Description and scale of key monetised costs by 'main affected groups'

#### Costs to businesses:

- SMS firm compliance and familiarisation costs with digital regime
- Foregone subscription revenue due to easier consumer management of unwanted subscriptions
- Implementation costs of easy exiting, cooling-off and subscription reminder measures
- Additional merger investigation costs and familiarisation costs with the reforms to merger control
- Costs arising from more effective consumer law enforcement
- Administration and legal costs to businesses of complying with markets and antitrust reforms
- Ongoing and set-up costs of operating pre-payment protection schemes
- Costs to ADR providers to become accredited and meet minimum standards
- Familiarisation cost with re-write of CPRs

#### Costs to Exchequer:

- Ongoing operational costs of Digital Markets Unit
- Cost to the High Court in England & Wales and the Court of Session in Scotland of new appeal cases as a result of the new CMA administrative consumer enforcement decisions

### Other key non-monetised costs by 'main affected groups'

- Foregone business profits because of improvements in competition in digital markets

BENEFITS (£m)	Total Transition (Constant Price)	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0	681.0	5,602.2
High	0	2,316.6	19,550.8
Best Estimate	0	1,198.7	9,997.2

### Description and scale of key monetised benefits by 'main affected groups'

#### Consumer benefits:

- Savings to consumers arising from exiting unwanted subscriptions
- Savings to consumers arising from additional merger interventions
- Savings to consumers arising from stronger public, civil enforcement of consumer protection laws

#### Exchequer benefits:

- Benefit to the Exchequer of increased merger fees accrued by the CMA

<b>Other key non-monetised benefits by ‘main affected groups’</b>	
<ul style="list-style-type: none"> <li>• Improved certainty to businesses</li> <li>• Improved provision of information to consumers</li> <li>• More effective deterrence of non-compliant behaviour</li> <li>• More efficient CMA casework</li> <li>• Improved international cooperation with overseas competition authorities</li> <li>• Greater interoperability across online platforms</li> <li>• Positive spill overs to adjacent, dependent sectors</li> <li>• Lower costs for non-SMS firms associated with unfair treatment by SMS firms (e.g. exclusionary behaviour)</li> </ul>	
<b>Discount rate</b>	3.5%
<b>Key assumptions/sensitivities/risks</b>	
<ul style="list-style-type: none"> <li>• This IA assumes that firms will comply with applicable laws</li> <li>• This IA assumes the reforms are implemented in 2025</li> <li>• The ‘Do nothing’ scenario acts as the counterfactual to the preferred option</li> <li>• This IA estimates consumer benefits based on those estimated to have been previously delivered by the CMA</li> <li>• This IA forms caseload assumptions based on historic CMA activity and expert advice</li> <li>• For a detailed assessment of the assumptions made for each individual policy cost-benefit analysis please refer to the dedicated IAs published alongside this document</li> </ul>	

**BUSINESS ASSESSMENT (Option 1)**

<b>Direct impact on business (Equivalent Annual) £m:</b>			<b>Score for Business Impact Target (qualifying provisions only) £m: 898.5</b>
<b>Costs:</b>	<b>Benefits:</b>	<b>Net:</b>	
183.7 (QRP) 118.8 (NQRP)	4.0 (QRP) 0.0 (NQRP)	179.7 (QRP) 118.8 (NQRP)	

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# Introduction

1. This Impact Assessment (IA) presents a summary of the suite of policies in the Digital Markets, Competition and Consumers (DMCC) Bill.

## Background

2. Strong competition and consumer outcomes are critical for well-functioning markets that drive economic growth and long-term prosperity. The overarching legislative regimes for competition, consumers and economic regulation work well. For the most part, businesses are free to enter markets and compete on a level footing whilst consumer outcomes generally display adequate levels of satisfaction.
3. Despite the UK's world class competition and consumer policy regime<sup>1</sup>, recent evidence indicates that our competition and consumer policy frameworks are failing to keep pace with the market driving developments of the 21<sup>st</sup> century. There is evidence both internationally from the International Monetary Fund (IMF) and domestically from the Competition and Markets Authority (CMA) which shows that overall levels of competition have declined in the decades since our legislative framework was last overhauled in 1998, and further since the 2008 financial crisis<sup>2</sup>. The economic effects of the Covid-19 pandemic are likely to have compounded these challenges and are ever more important as the cost of living increases, due in part to rising costs in consumer markets.
4. Digital technologies are the engine driving the UK's economic growth. In 2019, the digital sector contributed over £150 billion to the UK economy and accounted for 1.8 million jobs in 2021<sup>3</sup>. 2021 saw record levels of investment into UK tech; the £29.4bn raised by UK start-ups and scale-ups in 2021 was double that raised in Germany (£14.7 billion)<sup>4</sup>.
5. Beyond their contribution to the economy, digital technologies play an increasingly important role in our everyday lives. They are redefining the way we work, access information and news, and stay in touch with loved ones. The widespread reliance on digital services, further intensified by the Covid-19 pandemic, has demonstrated the substantial benefits they offer. Ensuring that digital markets remain dynamic and competitive, so that they continue delivering these benefits, is central to the government's ambition to drive growth and build a world-leading digital sector.
6. However, there is compelling evidence that digital markets have become increasingly concentrated with the same large, global tech companies. In 2021, the following companies each reported more than 20% growth in revenue from the year before<sup>5</sup>, cementing their place as providers of essential digital services: Meta, Alphabet, Apple, Microsoft and Amazon. While the size and presence of 'big' digital firms is not inherently bad, there is a growing consensus that this concentration of

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<sup>1</sup> The CMA was rated 'very good' in the 2021 Global Competition Review, alongside Australia's Competition and Consumer Commission and the US Department of Justice.

<sup>2</sup> [Competition and Markets Authority \(2022\), State of UK Competition Report 2022](#)

<sup>3</sup> [Department for Digital, Culture, Media and Sport \(2022\) Sectors Economic Estimates - Employment January 2021 to December 2021](#)

<sup>4</sup> [Department for Digital, Culture, Media and Sport \(2021\), Press Release: UK tech sector achieves best year ever as success feeds cities outside London](#)

<sup>5</sup> [Company filings on Statista \(2021\), Big Tech Keeps Getting Bigger](#)



entrenched market power amongst a small number of tech companies is undermining effective competition, restraining growth and innovation, and causing harm to the consumers that rely on them.

7. Further to this, there are markets with persistently higher levels of consumer harm, with 69% of consumers in the UK experiencing detriment between April 2020 and April 2021<sup>6</sup>. The Consumer Protection Study (2022) found that the airline and package holiday and tours sectors had the highest incidence of reported detriment<sup>7</sup>. In the absence of intervention, underlying issues will continue to drive consumer dissatisfaction and subsequent falls in consumer trust in these markets.

## The UK competition system

8. Competition is the process of rivalry between suppliers that takes place either in the market or for the market. This rivalry usually involves suppliers competing for customers through offering products or services that have lower prices, better quality or are more innovative or in some way unique compared to those of their competitors.
9. Competition is important to economic welfare, driving productivity growth both within and across firms. Competition forces firms to improve management techniques and innovate and encourages improvements in the resource allocation between firms. In the short term, competition forces firms to allocate resource more efficiently, putting downward pressure on costs. In the long term, competition generates dynamic benefits as the most productive firms expand their market share, the worst performing firms exit, and new firms enter the market.
10. However, markets may fail to deliver competitive outcomes. This may be due to barriers to entry and/or expansion, anti-competitive behaviour by firms or weak consumer engagement. The competition regime aims to address these market failures where they arise.
11. The UK's competition regime seeks to keep markets competitive by:
  - a. **Preventing businesses from restricting competition** – The prohibitions in the Competition Act 1998 (CA98) prevent certain types of anti-competitive behaviour, including co-ordinated conduct (Chapter I)<sup>8</sup> and the abuse of a dominant position through exclusionary or exploitative behaviour (Chapter II). CA98 is enforced principally via the CMA, while the sector regulators hold concurrent powers in their own sectors.
  - b. **Screening mergers to prevent anticompetitive consolidation and maintain rivalry** – Merger control rules are set out in the Enterprise Act 2002 (EA02). Mergers that meet the statutory thresholds may be reviewed by the CMA to check whether they could lead to a 'substantial lessening of competition' (SLC) within any UK market. If an SLC is found, mergers may be prohibited, or cleared on condition of accepting undertakings or issuing a final order to address the potential competition problem.
  - c. **Intervening in markets to unblock competition** – EA02 establishes powers for the CMA to investigate and remedy markets that do not appear to

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<sup>6</sup> [Department for Business, Energy and Industrial Strategy \(2022\), Consumer Protection Study](#)

<sup>7</sup> [Department for Business, Energy and Industrial Strategy \(2022\), Consumer Protection Study](#)

<sup>8</sup> Chapter I of the Competition Act 1998 prohibits agreements, decisions and concerted practices between or among undertakings or associations of undertakings which have as their object or effect the restriction, distortion or prevention of competition within the UK and which affect trade within the UK

be functioning properly. If a first stage 'market study' suggests that any feature of a market prevents, restricts, or distorts competition, it can be referred to a more detailed 'market investigation' into whether or not there is an adverse effect on competition (AEC). Alternatively, a CMA can launch a market investigation without having undertaken a market study if it has reasonable grounds for suspecting that there is an AEC present. If an AEC is found, the CMA can introduce a range of remedies to the market.

- d. Advising government on how its policies will affect competition.
12. The UK has become a world-leader in opening markets to competition and establishing a regime that tackles anti-competitive behaviour and creates a level playing field between consumers and firms.
  13. From 2019/20 to 2021/22, the CMA estimate that competition enforcement delivered £356m of direct consumer benefits, merger control delivered £2,030m and market studies delivered £3,967m<sup>9</sup>. These benefits arose from lower price, improved choice and better quality for UK consumers.
  14. Despite the success of the UK's world leading competition regime, recent developments in modern markets have exposed areas for improvement in the CMA's investigative and enforcement powers. Furthermore, the UK's departure from the European Union (EU) offers an opportunity to use newfound freedom to decide which business conduct to investigate, and what the best outcomes are for UK markets specifically.

## Consumer rights and their enforcement

15. Consumer rights play an essential part in fair, free and competitive markets, providing consumers with the confidence and information needed to choose how and where they spend their money or hand over their personal data. Fair treatment of consumers must give traders a commercial advantage and those who misbehave must not undermine the commercial success of those who abide by the law.
16. The existing framework establishes a core set of consumer rights and processes for regulators to enforce them, with the CMA's main consumer enforcement powers shared with other consumer protection bodies:
  - a. **Part 8 of the Enterprise Act provides a court-based civil mechanism for the enforcement of consumer protection laws to protect the collective interests of consumers.** The CMA and other enforcers<sup>10</sup> may apply for an order from a civil court, or agree an undertaking, in relation to traders and accessories<sup>11</sup> who infringe consumer protection laws, in particular:
    - i. **The Consumer Protection from Unfair Trading Regulations 2008 (CPRs)** which prohibit traders from engaging in unfair commercial practices with consumers.

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<sup>9</sup> <https://www.gov.uk/government/publications/cma-impact-assessment-2021-to-2022/impact-assessment-2021-to-2022>

<sup>10</sup> Such as sector regulators, e.g. Ofgem, Ofcom, the CAA etc., and local authority trading standard services (LATSS)

<sup>11</sup> For example, company directors or major shareholders.

- ii. **The Consumer Rights Act 2015 (CRA)** which consolidated consumer rights covering contracts for goods, services, digital content and the law relating to unfair terms in consumer contracts or notices.

In some circumstances the CMA and other enforcers can also apply for an order in relation to likely infringing conduct. Such orders and undertakings must require compliance and may include enhanced consumer measures.

- b. **Criminal powers to prosecute traders that engage in most unfair practices** under the CPRs.
  - c. **The power to seek an injunction<sup>12</sup> to stop businesses using unfair terms or notices** with consumers.
  - d. **Schedule 5 to the Consumer Rights Act which sets out the information gathering and investigatory powers** which can be used by consumer protection law enforcers for the purposes of the above enforcement processes.
17. For consumer rights to have an impact on and improve the function of markets, traders must comply with the law and consumers must have confidence that their rights will be respected and enforced. To achieve this, traders must have sufficient understanding of the law that they do not accidentally breach it in a way that harms consumers.
  18. The majority of transactions do not involve any dispute between a trader and a consumer arising from an alleged breach of the law. Where these do arise, either can, in general, bring the dispute before a court for resolution. If this is seen as an unattractive option, there are Alternative Dispute Resolution (ADR) services like mediation and ombudsman services frequently on offer that provide an easier, lower cost alternative to the courts.
  19. Where traders engage in actual or likely breaches of certain consumer protection laws, which harm the collective interests of consumers, the CMA and certain other enforcers can bring court proceedings to prevent or stop the breach and obtain redress for consumers (as explained above).
  20. Effective public enforcement should result in justice for both parties and makes sure that those traders who may be tempted to test and exceed the boundaries of the law fear they will be challenged and, if warranted, punished. It helps achieve a level playing field for business, ensuring that the vast majority of firms that play by the rules are not undercut by those few who do not. This is essential to consumer confidence and economic growth and incentivises businesses to innovate and deliver the high quality of goods, services, and digital content demanded by consumers.
  21. The current system generally works and has delivered significant benefits. From 2019/20 to 2021/22, CMA estimates that consumer protection enforcement delivered £440m of direct consumer benefits<sup>13</sup>. These benefits arose from lower prices, improved choice and better quality for UK consumers.

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<sup>12</sup> In Scotland, an interdict rather than an injunction is sought.

<sup>13</sup> <https://www.gov.uk/government/publications/cma-impact-assessment-2021-to-2022/impact-assessment-2021-to-2022>

## Rationale for intervention

22. This section provides an overarching summary of the rationale behind the suite of measures proposed in the Bill. For a more detailed description of the problem under consideration for each policy area, please refer to the dedicated IAs published alongside this document.
23. The Digital Markets, Competition and Consumers Bill will create a more competitive free market economy. This will drive down prices to address cost of living, help enterprising businesses, and drive economic growth and productivity. Consumers will have more control over their spending, and regulators will have the tools they need to make markets, especially digital markets, work for businesses and consumers. The proposed package of policies uses the advantage of leaving the EU to take a tailored approach to UK markets and consumers. This includes a new approach to digital markets, new opportunities to improve consumer experiences, and consolidating the role of regulators taking on new responsibilities.

### Enhancing the competition regime

24. The level of competition in any market is determined by a multitude of economic factors and conditions, including technological developments and merger and acquisition (M&A) activity, with measures of market concentration and mark-ups providing an indication of how competition is changing over time. Despite the actions that the UK has taken to promote competition, there is evidence internationally and from the CMA that competition may have weakened. It is therefore essential that the competition regime does more to encourage and keep markets competitive as they modernise.
25. Recent evidence presented by the CMA in their State of Competition<sup>14</sup> report evidences a decline in the level of UK competition. It shows that there was a marked increase in concentration in the years after the 2008 financial crisis. Since then, concentration has fallen, but it remains above levels seen prior to 2008. Furthermore, the CMA estimate that average markups have increased since 2008 from just over 20% to about 35%. It also shows that the increase in markup has been higher for the 10% most profitable firms, with evidence on rank persistence suggesting that the largest and most profitable firms are able to maintain a dominant status for longer than in the past.
26. Academics have arrived at similar findings in comparable timeframes. Bell and Tomlinson (2018) find broad increases in concentration across sectors of the UK economy between 2003 and 2016, particularly in the years following the financial crisis<sup>15</sup>. Additionally, Aquilante et al (2019) estimate that average UK mark-ups rose from 1.23 in 1987 to 1.55 in 2017<sup>16</sup>.
27. Furthermore, the dynamic nature of digital markets has changed, and those firms which once competed to gain a share in their markets are in many cases now the largest and most powerful global firms. There is a growing body of evidence that the

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<sup>14</sup> [Competition and Markets Authority \(2022\), State of UK Competition Report 2022](#)

<sup>15</sup> Bell, T., & Tomlinson, D. (2018). Is everybody concentrating? Recent trends in product and labour market concentration in the UK. Briefing, Resolution Foundation

<sup>16</sup> Aquilante, T. et al. (2019), Market Power and Monetary Policy. Bank of England Staff Working Paper No. 798.

lack of competition in activities by digital firms is often the result of specific market features (listed in the Digital markets IA) that lead to entrenched market power.

28. Existing regulatory tools are not well suited to identifying quickly and remedying competition concerns arising from these features of digital markets. The proposed digital markets regime is one which uses 'ex-ante' regulation, whereby the regulator aims to identify problems beforehand and shape market behaviour through clear requirements. For instance, the conduct requirements (which fall under the preferred policy option) seek to manage the harmful effects of substantial and entrenched market power, by setting out how firms with strategic market status<sup>17</sup> (SMS) are expected to behave, and thus protecting consumers and competing businesses. Utilising ex-ante regulation will, by setting expectations in advance, mitigate the consumer harm that stems from a lack of effective competition.
29. There is compelling evidence that digital markets may have contributed to the decline in the level of UK competition. In 2021, the following companies each reported more than 20% growth from the year before, cementing their place as providers of essential digital services: Meta, Alphabet, Apple, Microsoft and Amazon<sup>18</sup>. While the size and presence of 'big' digital firms is not inherently bad, there is a growing consensus that this concentration of entrenched market power amongst a small number of tech companies is undermining effective competition, restraining growth and innovation, and causing harm to the consumers that rely on them. For example, the International Monetary Fund (IMF) has found that market power in the tech industry increased significantly between 1995 and 2016, including an increase of over 30% in markups and an increase of over 10% in concentration, globally<sup>19</sup>. Google's revenue per search is now 30-40% higher than its next competitor for identical search queries<sup>20</sup> and Facebook's revenue per user is more than 10 times higher than its competitors<sup>21</sup>.
30. Furthermore, several academic studies have evidenced the impact of M&A activity on the level of competition through analysing the effects mergers have had on mark-ups in specific markets. Using evidence gathered from horizontal mergers investigated by the European Commission, Stiebale and Szücs (2019) estimate that mergers resulted in a 2% to 4% increase in rival firm's mark-ups post-merger on average<sup>22</sup>. Furthermore, they found that these impacts were most pronounced when pre-merger market shares and mark-ups were already high. These findings also suggest that markups increased due to higher prices as opposed to reductions in marginal cost. The jurisdictional thresholds set out in EA02 are now twenty years old<sup>23</sup> and markets are becoming increasingly dynamic as a result of technological advancements. This offers another partial explanation as to why competition levels may have declined and highlights the need to modernise the UK's merger control regime.

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<sup>17</sup> To designate a firm with SMS, the DMU will have to assess whether the firm has substantial and entrenched market power in relation to a digital activity, giving rise to a strategic position.

<sup>18</sup> Statista, [Big tech keeps getting bigger](#), October 2021

<sup>19</sup> IMF, [Rising Corporate Market Power: Emerging Policy Issues](#). March 2021.

<sup>20</sup> CMA analysis of Google and Bing's search prices when comparing like-for-like search terms, [CMA Market Study](#), June 2020

<sup>21</sup> In the UK revenue per user increased from less than £5 in 2011 to over £50 in 2019, [CMA, CMA Market Study](#), June 2020

<sup>22</sup> Stiebale, J. Szücs, F. (2019): Mergers and market power: Evidence from rivals' responses in European markets, DICE Discussion Paper, No. 323, ISBN, Heinrich Heine University Düsseldorf,

<sup>23</sup> EA02 was amended in the Enterprise and Regulatory Reform Act (2013) and the turnover test specifically was amended in The Enterprise Act 2002 (Turnover Test) (Amendment) Order 2020 however the threshold was left unchanged

31. Despite the difficulty in disentangling the drivers of competition levels in the UK, the above evidence highlights room to further improve the UK's world class competition regime to ensure it keeps pace with rapidly evolving markets. To secure long-term prosperity and build back better from the pandemic, the UK needs a regime that delivers greater competition, innovation, and growth in UK markets. Recognising this, government has actively encouraged a debate on the upgrades required, seeking contributions from Professor Furman, Lord Tyrie in his role as Chair of the CMA, and John Penrose MP. They have argued that the regime can be slow and lacking in the powers necessary to prevent harms in the UK's 21st century economy.

## Driving better outcomes for consumers

32. Markets are continually changing and adapting to new opportunities. These changes bring benefits to consumers in the form of better services, and to businesses in the form of growth and higher profits rewarding their innovation. Consumer rights must keep pace with market innovations, so that consumers remain confident engaging with businesses offering new products and services. Markets must retain the flexibility to continue developing and meeting consumers' evolving needs.

33. In light of recent trends in markets, government has identified two features which may have contributed towards consumer detriment:

a. **The rise of online shopping, accelerated by the pandemic.** In recent years, there has been a pronounced increase in online shopping which was driven even further by the pandemic. The Office for National Statistics reports that from 2008 to 2020, the percentage of adults reporting shopping online in the last 12 months in the Internet Access Survey increased from 53% to 87%<sup>24</sup>. Amazon's E-Commerce net sales increased from \$39.3bn to \$146.4bn from 2014 to 2021<sup>25</sup>. This trend has increased consumer exposure to harms associated with the collection and use of consumer data, harmful online choice architecture and false or misleading information such as from fake reviews. Fake reviews have been the subject of a series of investigations by the CMA<sup>26</sup> and Which?<sup>27</sup>.

b. **An increase in subscription contracts.** Estimated consumer spending on subscriptions is between **£21 billion and £34 billion a year** across multiple sectors. While subscriptions can be convenient and low-cost way to purchase goods, services, and digital content for consumers, they are not without issues. For example, some traders make it too difficult for consumers to cancel a subscription. This can cause ongoing detriment because such subscriptions can auto-renew, sometimes indefinitely, for goods, services, or digital content that a consumer does not need or want.

34. These trends shed light on the new types of harmful commercial trading practices which are emerging as consumers and businesses take an increasing amount of their activity online. As technological developments continue to change the way businesses and consumers interact it is crucial to ensure the necessary mechanisms are in place to ensure consumer protection law can keep pace.

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<sup>24</sup> [Office for National Statistics, 2019, E-commerce and ICT activity, Table 8](#)

<sup>25</sup> <https://www.statista.com/forecasts/1218313/amazon-revenue-development-ecommerce>

<sup>26</sup> <https://www.gov.uk/government/news/cma-to-investigate-amazon-and-google-over-fake-reviews>

<sup>27</sup> <https://www.which.co.uk/policy/consumers/5860/realfakereviews>

35. Alongside the recent developments highlighted above, the CMA and other regulators do not have powers to act quickly and decisively to seek solutions to aid the collective interests of consumers. Delays when enforcing consumer protection law arise because a requirement to go to court may arise at all stages of an investigation. Taking civil cases to court is lengthy, complex, and costly and even if they are successful there are no financial sanctions for civil breaches of consumer protection law and few civil sanctions for frustrating the enforcement process. This leaves the CMA and other enforcers without the necessary powers to deter and punish non-compliance.
36. Unless enforcers' powers are strengthened in this regard, the minority of traders who may consider breaking consumer law will not be adequately deterred from doing so. Lengthy civil enforcement cases will also allow consumer detriment to persist in markets for longer periods of time.
37. Furthermore, seeking redress via the courts is often an expensive and lengthy process which can deter consumers and therefore leaves consumer detriment unresolved.<sup>28</sup> This is especially the case for low-value or minor problems; at least a fifth of consumers who did not pursue a problem have stated this as a reason for not taking businesses to court to settle their dispute. A further third of such consumers were discouraged by the perceived effort and poor prospects of complaining or not being aware of how to start the process.<sup>29</sup>
38. ADR would be a low-cost and faster means of resolving disputes between consumers and businesses and could be used as a means of seeking redress in many sectors. However, low business and consumer take-up of ADR and continued high detriment in some sectors suggest that there are still problems preventing ADR from reaching its full potential to reduce consumer detriment.

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<sup>28</sup> Special Eurobarometer 342 Consumer Empowerment report 2011, page 204. Available at [http://ec.europa.eu/consumers/consumer\\_empowerment/docs/report\\_eurobarometer\\_342\\_en.pdf](http://ec.europa.eu/consumers/consumer_empowerment/docs/report_eurobarometer_342_en.pdf)

<sup>29</sup> BEIS (2022): Consumer protection study 2022: understanding the impacts and resolution of consumer problems. <https://www.gov.uk/government/publications/consumer-protection-study-2022> (figure 21)

# Objectives

39. The DMCC Bill has three high level objectives, which can be thought of as the key pillars of the proposed reforms:
- a. Strengthen the competition and consumer regime so that it can effectively promote competition and pro-consumer outcomes in the UK in increasingly dynamic and globalised markets.
  - b. Improve UK consumer welfare through tackling identified areas of consumer detriment.
  - c. Ensure the competition regime is focussed on the most prominent harms, with the identified harms being remediated quickly so that the costs to businesses under investigation and consumers<sup>30</sup> is minimised.
40. The impact assessments outlined in Annex A provide the policy background, including specific objectives and the problem under consideration for each policy measure. Table 1 on page 16 highlights how each package of reforms, and its underlying objectives, feed into the three key pillars outlined above.

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<sup>30</sup> 'Consumers' refers to both end users and business customers



Table 1 - DMCC key pillars and objectives of reforms

	Pillar		
	Strengthen the competition and consumer regime so that it can effectively promote competition and pro-consumer outcomes in the UK in increasingly dynamic and globalised markets.	Improve UK consumer welfare through tackling identified areas of consumer detriment.	Ensure the competition regime is focussed on the most prominent harms, with the identified harms being remediated quickly so that the costs to businesses and consumers is minimised.
Digital market reforms	✓		✓
Merger reforms	✓		✓
Market inquiry reforms	✓		✓
Stronger CA98 enforcement	✓		✓
Subscription traps	✓	✓	
Administrative model of consumer law enforcement for the CMA and new powers for the CMA and courts to impose civil monetary penalties	✓	✓	
Wider consumer measures <sup>31</sup>	✓	✓	

<sup>31</sup> Wider consumer reforms refer to better prepayment protections, the transposition of the CPRs into UK law, the new power to amend the list of automatically unfair commercial practices in the Consumer Protection from Unfair Trading Regulations 2008 and alternative dispute resolution.

# Description of Options

41. This section summarises the suite of preferred proposals across the Bill. For a more detailed breakdown of the specific reforms each proposal includes please refer to the dedicated IAs published alongside this document.
42. Do nothing and non-regulatory alternatives of each of the proposed measures are assessed against the preferred option in the dedicated sections of this IA or accompanying IAs.

## Option 1 - Preferred option

43. The government is proposing the following package of competition policy reforms to address the problems identified:
- a. **Merger reforms (EA02)** – these will provide a more effective and proportionate review process.
  - b. **Market inquiries reforms (EA02)** – these will provide a more efficient, flexible, and proportionate market inquiry process as well as provide the CMA powers to gather information in the road fuel market following the recommendation of its road fuel market study.
  - c. **Digital markets reforms** – this involves giving powers to the CMA, which will in practice be exercised by a newly created administrative unit within the CMA (the Digital Markets Unit (DMU)), that allow it to designate firms with SMS and impose conduct requirements and pro-competitive interventions (PCIs). SMS firms will also be subject to merger reporting requirements.
  - d. **Stronger enforcement against unlawful anticompetitive conduct (CA98)** – Stronger enforcement will deliver faster and more flexible investigations which identify and resolve unlawful anticompetitive conduct more quickly.
  - e. **Stronger investigative and enforcement powers across competition tools** (cross-cutting) – these will deliver more consistent, efficient, and effective investigative procedures across the CMA’s competition tools.
44. Furthermore, government is proposing a series of updates to consumer rights and the process for the civil enforcement of consumer protection law to protect the collective interests of consumers:
- a. **Tackling subscription traps** – strengthening and clarifying the law on pre-contract information so that consumers know what they are signing up for; nudging consumers so they are aware of ongoing subscriptions; and making it easier for consumers to exit subscriptions.
  - b. **Transpose the CPRs into UK law** – this writes the CPRs unamended in their legislative effect into UK law. This ensures a lacuna in consumer protection from unfair commercial practices is avoided following the introduction of the REUL sunset provisions of the REUL Bill. This also offers the opportunity to simplify, clarify or align the CPRs with other areas of UK law without changing their meaning.
  - c. **Power to Amend the CPR List of Automatically Unfair Practices** – a new power for the Secretary of State to by regulations amend the list of automatically unfair commercial practices in the Consumer Protection from Unfair Trading Regulations 2008. This will help to ensure consumer law keeps pace with current trends by enabling the Secretary of State to amend

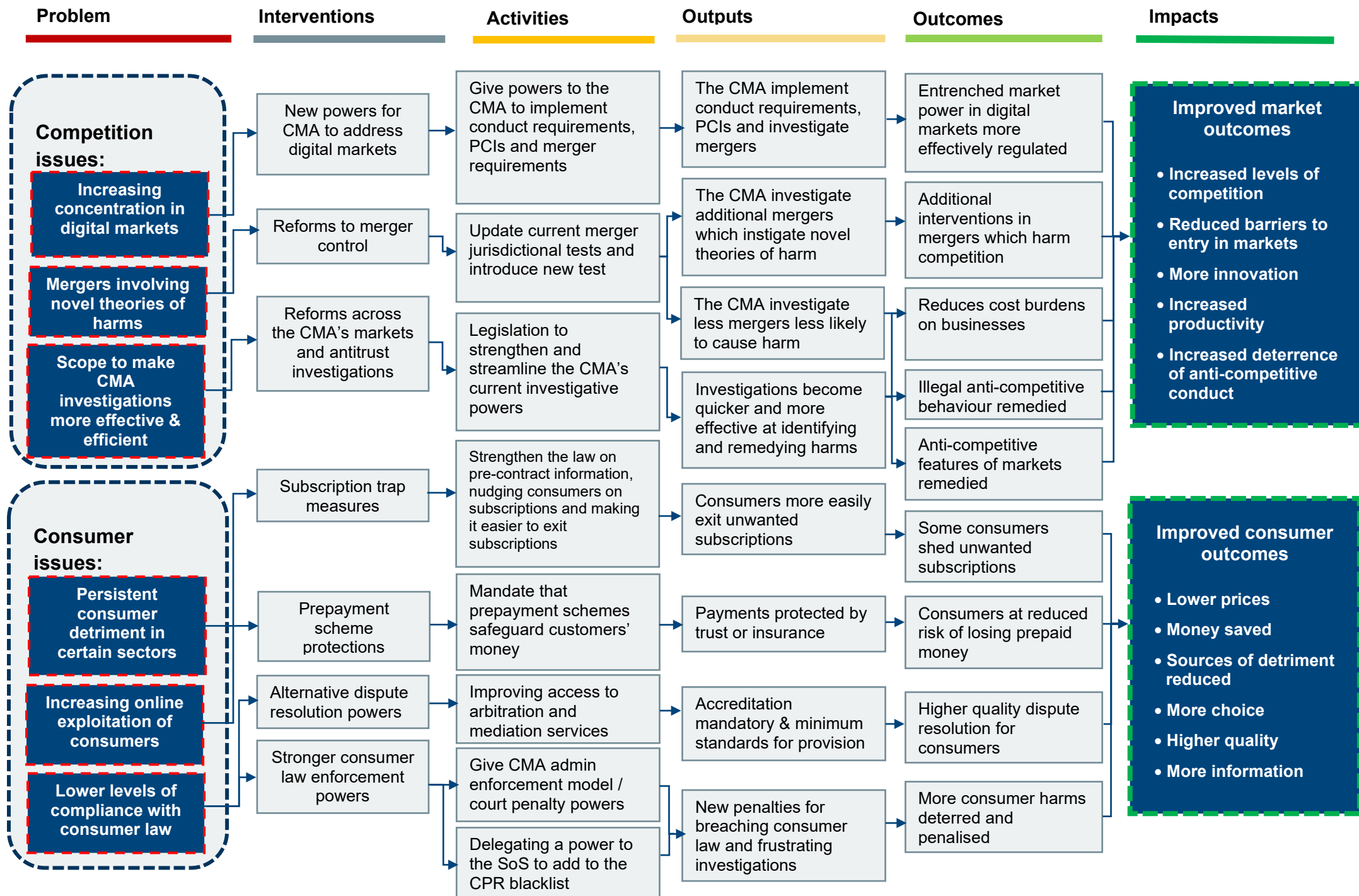
the list of practices which are automatically unfair and unlawful in all circumstances.

- d. **Better prepayment protections** – strengthening prepayment protections for consumers by amending the law to require that consumer prepayment schemes like Christmas savings clubs safeguard customers' money.
- e. **Stronger enforcement of consumer protection laws** – firstly, establishing an administrative process for the CMA in relation to certain consumer protection laws, where the CMA can decide itself whether these consumer protection laws have been breached, direct compliance and remedies and impose civil monetary penalties. This mirrors their abilities in competition law enforcement. Secondly, to provide the courts (in addition to the CMA) with new powers to impose civil monetary penalties in response to infringements of consumer protection laws, non-compliance with undertakings and non-compliance with information notices.
- f. **Supporting consumers and traders to resolve more disputes independently** – providing more support to consumers in individual disputes with traders by improving consumers' access to arbitration and mediation services, thus avoiding the need to go to court. This includes improving the quality and oversight of alternative dispute resolution services and improving consumer awareness.

### Option 2 – Do nothing

- 45. Under the 'do nothing' scenario the current competition and consumer frameworks are left unchanged from how they currently stand. This scenario acts as the counterfactual to the preferred option. Under this option, whilst the CMA will be able to use its current powers to partially tackle some of the aforementioned harms, the 'do nothing' option will not fully address the policy problem as markets become increasingly dynamic and digitalised.
- 46. Without granting the new powers for the DMU to regulate SMS firms in digital markets, the CMA will have to rely on existing regulatory tools. These tools lack the flexibility and ability to impose ex-ante regulation, so as to regulate digital markets as effectively and efficiently as possible. Consequently, consumers will likely continue to experience the persistent harms that arise from entrenched market power.
- 47. Similarly, as all markets have become increasingly dynamic, existing competition law may fall short of providing the tools necessary for the CMA to regulate competition in a manner which achieves the best outcomes for consumers whilst minimising any burdens placed on businesses. Certain types of mergers which are now recognised as potentially harmful may begin to slip through existing jurisdictional thresholds whilst market inquiries and antitrust investigations will miss the opportunity to become more effective and streamlined. Any subsequent falls in competition because of this will leads to harms faced by consumers and fair practising businesses alike.
- 48. Furthermore, without strengthening consumer rights and consumer law enforcement, persistent detriment will continue to arise in certain sectors as sub-optimal levels of compliance continue. This detriment may worsen in the face of emerging online harms which are exploiting consumers in new ways. Any emerging detriment is likely to impact consumers particularly adversely following the current cost of living crisis where consumers are facing unprecedented inflation.

49. In line with guidance, we treat the status quo as the relevant counterfactual for estimating the impacts of reforming, retaining, or rewriting any Retained EU Law through this bill. This “do nothing” option therefore assumes (and requires) that, even without the DMCC bill, regulations such as the CPRs and the ADR will be retained through separate parliamentary action. The relevant sections in Annex 4 outline our rationale why repealing or sunseting would be undesirable.
50. The DMCC bill will transpose the consumer law directly related to the delivery of the policy reforms set out in our consultation response. Forthcoming government announcements will describe our plans for other retained consumer and competition EU law that is not transposed through this bill.



# Summary impact of the Bill

51. This section outlines the aggregated impacts across individual measures within the DMCC Bill where quantification has been possible.
52. **All figures presented below are in 2019 prices and discounted to 2020 present value terms over a ten-year appraisal period in line with His Majesty's Treasury (HMT) Green Book guidance<sup>32</sup>.**
53. The Bill impacts are expected to begin in 2025 once the package of Bill measures has been implemented, assuming the Bill undergoes passage in the third parliamentary session between 2023 to 2024.
54. **In total, the DMCC Bill is estimated to result in a Social Net Present Value (SNPV) of £4.84bn.** The estimated impacts are driven by the digital market reforms package. The expected impacts of this package greatly outweigh the other reforms proposed in the Bill. The package of Bill measures is expected to deliver significant consumer benefits through improved control over personal data, additional interventions in mergers involving SMS firms and making it easier to cancel unwanted subscriptions.
55. Discounting the digital markets reforms, the consumer and competition measures are estimated to have a slightly negative SNPV in aggregate. This is driven by the subscription traps package, the second most impactful package of measures in the Bill behind the digital reforms. The subscription traps package is expected to lead to a transfer from businesses to consumers of the value of unwanted subscriptions that consumers cancel. This means a cost to businesses and an equivalent benefit to consumers, resulting in a neutral effect on the SNPV (the two transactions cancel each other out). Also, only some of this transfer will be a profit impact on businesses because businesses will be partly able to adjust their cost base to account for lower sales. In addition to this transfer, these measures introduce a one-off implementation cost to businesses of £315m which largely drives a negative SNPV in the rest of the DMCC Bill (excluding the digital reforms).
56. **The package of measures is expected to deliver a consumer<sup>33</sup> benefit of £9.70bn** over the ten-year appraisal period as consumers gain from improved control over their data, cancelling unwanted subscriptions, improved merger control and consumer protection enforcement.
57. **The proposals are expected to result in a £4.85bn cost to business; £2.57bn and £2.28bn of direct and indirect costs respectively over the ten-year appraisal period.**
58. Therefore, for every pound imposed on businesses, consumers are expected to gain two pounds.

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<sup>32</sup> [HM Treasury, The Green Book: appraisal and evaluation in central government \(2022\)](#)

<sup>33</sup> For the purposes of communicating impacts, 'consumer' refers to both end users and also business customers

## Benefits

59. Given that the proposed package of reforms aims to enhance levels of competition and improve consumer outcomes, the expected benefits arise from those experienced by consumers. Table 2 presents a description of the expected consumer benefits delivered by each measure below.

60. Enhanced levels of competition will also offer benefits to fair practising businesses who will be given the opportunity to operate on a more level playing field as barriers to competition are removed. However, due to a lack of robust evidence to base assumptions on, these benefits are discussed qualitatively throughout the IAs in the interest of taking a conservative approach towards benefits estimation.

61. Please refer to the individual IAs published alongside this document for a detailed description of the expected consumer benefits and underlying methodology taken for each measure.

**Table 2 - Summary of consumer benefits**

Proposal	Consumer Benefit (£m) <sup>34</sup>	Description of benefit
Digital markets reforms	6,188.0	Consumer savings arising from: <ul style="list-style-type: none"> <li>• Additional interventions in harmful mergers involving SMS firms. This includes lower prices, more choice and improved quality of goods and services</li> <li>• Conduct requirements preventing self-preferencing behaviour by SMS firms</li> <li>• Conduct requirements and remedies granting consumers more control over personal data.</li> </ul>
Reforms to merger control	75.5	Consumer savings arising from additional interventions in harmful mergers by the CMA. This includes lower prices, more choice and improved quality of goods and services.
Reforms to markets and competition enforcement	Unquantified	Whilst unquantified, the reforms are expected to deliver consumer benefits through faster and more effective resolution

<sup>34</sup> Figures refer to the sum of net present value consumer benefits over the 10-year appraisal period.

		of identified competition concerns or illegal anti-competitive conduct in markets. Extended information gathering powers in the road fuel market are also expected to deliver lower prices and more choice for consumers.
Subscription traps	2,895.6	Unwanted subscription costs saved by consumers who choose to cancel subscriptions.
CMA administrative process and new civil monetary penalty powers for the courts	539.1	Direct consumer benefits arising from stronger enforcement of consumer law. This includes lower prices, more choice and improved quality of goods and services.
Wider consumer measures	Unquantified	Whilst unquantified, the reforms are expected to deliver consumer benefits through: <ul style="list-style-type: none"> <li>• Higher quality ADR provision</li> <li>• Improved protections provided by prepayment schemes</li> </ul>
Cross-cutting reforms	Unquantified	Whilst unquantified, the reforms are expected to deliver consumer benefits through: <ul style="list-style-type: none"> <li>• Swifter investigations</li> <li>• Enhanced international co-operation</li> <li>• Improved compliance with CMA procedures</li> <li>• Improved information gathering powers</li> </ul>

## Direct costs

62. The profit-impacting direct costs mainly consist of the ongoing costs to business arising from the subscription traps and digital markets reforms of £1.2bn and £1.0bn, respectively, over the appraisal period. In the case of subscription traps, the cost to business arises from foregone subscription revenue, as subscriptions customers are offered easier exiting options. The subscriptions traps proposals also introduce a one-off implementation cost to business of £315m. For the digital reforms, the cost to business arises from SMS firm compliance costs with the new



digital regime, including the costs to comply with merger transparency requirements and costs associated with the implementation of PCIs.

63. The merger reforms are estimated to impose a £26m net direct cost on business over the appraisal period arising from additional merger investigations and familiarisation with the changes. This additional direct cost is composed of additional internal administration, legal and economist fees incurred during expected additional merger investigation procedures following the reforms. The wider consumer reforms are expected to introduce a direct cost of £46m over the appraisal period, arising from businesses familiarising themselves with the re-write of the CPRs in the DMCC Bill, incurring the cost to protect consumer prepayments for certain types of savings schemes and costs to ADR providers. The reforms to markets and competition enforcement are expected to result in a direct cost to business of £10m over the appraisal period. These costs arise from improved CMA information gathering and market inquiry remedy powers, with the largest portion of this cost arising from extended information gathering powers in the road fuel market. The establishment of an administrative model of consumer enforcement for the CMA is not expected to impose direct costs on business as any costs associated with this measure will arise from infringements of consumer protection law. The new penalty powers for both the CMA and the courts will impose costs only on enforcement subjects found to be in breach of their existing legal obligations. In line with Better Regulation guidance, costs arising from non-compliance are excluded from quantified impacts.

### Indirect costs

64. Only the subscription traps policy and the administrative model of consumer enforcement have quantified indirect costs to business. The subscription traps measures are expected to introduce an indirect cost on business of £1.7bn over the appraisal period arising from reminders, easier ways to end subscriptions, and increased provision of information to consumers which may lead to them ending unwanted subscriptions (therefore this cost represents a transfer back to consumers).<sup>35</sup> The CMA administrative model of consumer law is estimated to impose an indirect cost on business of £0.5bn arising from foregone revenue as a result of stronger consumer protections. This cost also represents a transfer back to consumers.

### Impact on public finances

65. The Bill is expected to place a small cost of £9m on public finances. The Digital Market Unit's ongoing operational costs will be covered by a levy placed on SMS firms and therefore place no significant cost on the Exchequer. The merger reforms offer a small net benefit to public finances as the reforms lead to additional merger fees accrued by the CMA which is paid to HMT. This is offset by the establishment of an administrative model of consumer enforcement for the CMA which is expected

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<sup>35</sup> There is an additional nuance on the EANDCB treatment of direct and indirect business cost for the subscription traps proposals. The dedicated impact assessment includes additional information on this.

to generate new appeal cases in the High Court in England & Wales or Northern Ireland and the Court of Session in Scotland (this introduces a cost to public finances through the courts system).

66. In this IA, in line with the Regulatory Policy Committee’s (RPC) guidance, we have assumed that firms will comply with the proposed measures. To this end, the government does not expect the Final Order Mechanism (FOM) to impact public finances.

67. Please see Table 3 for a breakdown of the anticipated DMCC Bill Impact.

**Table 3: Breakdown of Costs and Benefits Profile of Bill Package<sup>36</sup>**

Proposal	Direct cost to business (£m)	Indirect cost to business (£m)	Consumer benefit (£m)	Social Net Present Value (£m)
Merger reforms	25.9	-	75.5	50.0
Reforms to markets and competition enforcement	10.2	-	-	-10.2
Subscription traps	1,474.1	1,736.7	2,895.6	-315.2
Wider consumer reforms	46.0	-	-	-46.0
CMA administrative measures	0.0	539.1	539.1	-0.3
Digital markets reforms	1,012.7	-	6,188.0	5,166.5
Cross-cutting reforms	0.9	-	-	-0.9
<b>Total Bill Package</b>	<b>2,569.8</b>	<b>2,275.8</b>	<b>9,698.3</b>	<b>4,843.9</b>

## Sensitivity analysis

68. The scenario modelling shows that the assumptions used (e.g. the percentage of unwanted subscriptions or the number of additional merger investigations) largely determine the estimated SNPV. The low and high scenarios estimate a **£2.6bn to**

<sup>36</sup> This table does not present expected impacts on the exchequer, please refer to para.65 for a breakdown of the £9m expected exchequer cost.

**£7.1bn** SNPV respectively. This demonstrates the expected beneficial impact of the Bill to society despite the inherent uncertainty in the underlying assumptions made.

69. Figure 1 below presents a breakdown of the sensitivity scenarios for each DMCC Bill measure where quantification has been possible.

Figure 1 - Estimated low to high sensitivity ranges

Proposal	SNPV Scenario (£m)		
	Low	Central	High
Merger reforms	- 19.3	50.0	119.3
Reforms to markets and competition enforcement	-5.6	-10.2	-14.9
Subscription traps	- 236.9	- 315.2	- 393.5
Wider consumer reforms	- 18.4	- 46.0	- 73.4
CMA administrative measures	- 0.0	- 0.3	- 0.8
Digital markets reforms	2,872.0	5,166.5	7,461.4
Cross-cutting reforms	-0.6	-0.9	-1.2
<b>Total Bill Package</b>	<b>2,591.2</b>	<b>4,843.9</b>	<b>7,096.9</b>

## Equivalised Annual Net Direct Cost to Business

70. Table 4 shows a breakdown of each measure’s contribution to the total EANDCB and description of where the direct cost arises from. All EANDCB figures are presented in 2019 prices and discounted to 2020.

Table 4: Equivalent Annual Net Direct Cost to Business Breakdown

<b>EANDCB Breakdown</b>	<b>Equivalent annual net direct cost to business (£2019, m)</b>	<b>Description</b>
<b>Transition costs</b>		
Digital markets reforms	0.13	Familiarisation costs
Subscription traps	36.62	Implementation of easy exiting, subscription reminder measures and cooling-off period by businesses
Merger reforms	0.21	Familiarisation costs with updated merger jurisdictional thresholds by legal firms
Wider consumer reforms	4.59	Familiarisation cost of re-write of CPRs and one-off cost of setting up prepayment protection schemes
<b>Ongoing costs</b>		
Digital markets reforms	117.52	SMS firm compliance costs, including the costs to comply with merger transparency requirements and costs associated with the implementation of PCIs
Subscription traps	134.64	Foregone subscription revenue arising from easy exiting measures transferring revenue back to consumers
Merger reforms	2.79	Additional mergers investigation costs
Wider Consumer Reforms	0.75	Ongoing costs to operate prepayment protection schemes
Markets and Antitrust Reforms	1.19	Additional business costs arising from activities to conform with enhanced CMA powers in the markets and antitrust regime
Cross-cutting reforms	0.10	Additional business costs arising from investigative assistance on behalf of overseas authorities
<b>Total EANDCB</b>	<b>298.55</b>	

71. The Business Impact Target (BIT) derived from the EANDCB monitors the economic impact of qualifying regulatory provisions (QRPs) on businesses introduced during each parliamentary session.
72. In line with Better Regulation guidance<sup>37</sup>, there are specific instances whereby provisions do not count towards the BIT, for example if a provision promotes competition. These are referred to as non-qualifying regulatory provisions (NQRPs).
73. Given the DMCC Bill contains several competition provisions this section also considers whether and where administrative exclusion D (pro-competition) applies. Proposals where the exclusion does apply mean the measure will be classified as a NQRP and therefore it's business impacts will not contribute to the BIT.
74. For a more detailed assessment of each proposal against the BIT competition exclusion criteria outlined in Better Regulation guidance, please refer to the dedicated IAs published alongside this document as annexes.
75. Where the quantification of costs has been possible, the total EANDCB estimated across the DMCC Bill is £298.6m. However, **the Bill consists of qualifying and non-qualifying regulatory provisions.**<sup>38</sup> The EANDCBs for QRPs and NQRPs are £179.7m and £118.8m respectively.
76. Table 5 below contains details on the breakdown of QRP and NQRP impacts for each measure.

Table 5 - Breakdown of qualifying and non-qualifying regulatory provisions

Proposal	Qualifying regulatory provision status	QRP – EANDCB (£m)	NQRP – EANDCB (£m)
Digital markets reforms	No – Administrative exclusion D (Pro-competition) criteria met by all proposals	-	117.65
Subscription traps	Yes	171.26	-
Merger reforms	Yes	3.01	-
CMA administrative measures	No – administrative exclusion J1 (regulator case work) applies.	-	-
Reforms to markets and competition enforcement	No – Administrative exclusion D (Pro-competition applies)	-	1.19
Wider consumer reforms	Yes	5.34	-
Cross-cutting reforms	Yes	0.10	-
<b>Total</b>		<b>179.71</b>	<b>118.84</b>

<sup>37</sup> <https://www.gov.uk/government/publications/better-regulation-framework>

<sup>38</sup> The bill also includes business impacts that were not included in the EANDCB for other reasons, for instance because the impacts were indirect or because they are not expected to impact profits. Where appropriate, such impacts are still considered for the Net Present Social Value.

**77. The QRPs result in an estimated BIT score of £898.5m.**

78. A portion of the expected costs remain unquantified due to a lack of robust evidence to base assumptions on and therefore do not contribute to the presented EANDCB. These costs have been assessed qualitatively in each IA. Given that many of the reforms aim to streamline the existing regime, many of the benefits to businesses arising from more efficient consumer and competition enforcement also remain unquantified.
79. This approach towards assessing costs has been deemed appropriate considering that the impacts of the more significant measures have been largely quantified, with there being scope for a portion of the unquantified costs and benefits to cancel one another out.

## Rationale and evidence to justify the level of analysis used

80. This IA contains the summary of impacts across the DMCC Bill and presents the aggregated impact of all measures where quantification has been possible. This IA includes the assessment of the following measures:
- a. Reforms to markets and antitrust regimes
  - b. Digital markets reforms
  - c. Reforms to merger control
  - d. Subscriptions traps proposals
  - e. Administrative model of consumer enforcement by the CMA
  - f. Wider consumer measures
    - i. Prepayment protection regulations
    - ii. Alternative Dispute Resolution
    - iii. Retaining CPRs
    - iv. Delegated power to add to CPR list of automatically unfair practices
81. The subscriptions traps, digital markets reforms and merger reforms policies contain the most impactful amendments to legislation and therefore are estimated to have the largest EANDCB. In line with the Better Regulation framework guidance, these measures have undergone a detailed assessment and have full IAs which have undergone independent scrutiny.
82. The reforms to markets and antitrust regimes and wider consumer proposals are expected to have a less pronounced impact. The department has developed proportionate analysis to estimate the expected impact of these policies. Given the smaller expected impact of these policies and in line with the Better Regulation Framework, the assessment of these measures is set out within dedicated streamlined IAs which have been published alongside this document in Annex 4. These IAs have also undergone independent scrutiny. While the administrative model of CMA consumer law enforcement has a larger anticipated impact, this impact falls outside of scope of the Better Regulation Framework, because it concerns better enforcement of existing law rather than new requirements.
83. The analysis summarised in this Bill IA has been informed by extensive stakeholder engagement, a public consultation and research to ensure the methodology and underlying assumptions are robust. Furthermore, all impacts have been quality assured to verify outputs and ensure the chosen approach is fit for purpose. In light of this, government is confident that the approach taken towards the level of analysis in this IA is justified, and in line with the Better Regulation Framework.
84. Please see Annex A for a list of the dedicated IAs which have been published alongside this document.

## Risks and assumptions

85. This section considers the risks and potential unintended consequences that have been considered during policy development alongside any mitigating actions that have been taken.
86. Furthermore, this section also evaluates the risks associated with the underlying methodology of impact estimation, highlighting where inherent uncertainty lies in the analysis.
87. Detailed assessment of risks concerning the digital markets, subscription traps and merger reform proposals can be found in the respective dedicated IAs published alongside this document.
88. Two key themes have been identified when evaluating the potential risks associated with the DMCC reforms appraised in this impact assessment.
  - a. **Burden to business** – the risk that proposals may impose unintended costs on businesses, either through the administrative cost of compliance through enforcement or costs associated with risk aversion arising from business uncertainty surrounding the reforms.
  - b. **Quality of enforcement decisions** – the risk that measures which are designed to streamline the existing regime place strain on the quality of the outcomes of the CMA's functions.

### Burden to business

89. Several of the proposals assessed in this IA seek to strengthen the existing competition and consumer regimes through providing the CMA with stronger enforcement powers to tackle breaches of competition and consumer law, or tackle competition issues identified in markets. For example, this includes measures which require businesses to undertake implementation trials for market inquiry remedies when the CMA requests, stronger CMA evidence gathering powers across consumer and competition functions and enabling the CMA to use compulsory evidence gathering powers on behalf of overseas authorities.
90. Although only a very small proportion of the UK business population comes into contact with the CMA each year, government recognises the importance of ensuring undue burdens are not placed on these businesses. Various measures impose administrative burden on businesses as they must dedicate resources to undertake the necessary steps to comply with the powers. This may raise concerns that there is a risk that the strengthened powers may be overly burdensome to businesses under such requirements as administrative costs divert resource away from the day to day, value generating activities of the business involved. Lengthy case procedures may also create significant uncertainty for involved businesses.
91. Government has taken account of any potential burden on business throughout policy development and ensured the necessary safeguards are kept in place to maintain a proportionate approach to competition enforcement. These safeguards will ensure costs are only placed on businesses where genuine competition and consumer concerns are present.



92. Furthermore, in the case of overseas assistance, the CMA will issue requests for information on behalf of overseas authorities in instances where reciprocity will likely enable the CMA to leverage information in return from overseas authorities. Furthermore, overseas authorities will likely only seek assistance in instances where they do not hold the necessary evidence gathering powers themselves. Therefore, government anticipates that only a handful of businesses will be subject to these requests.
93. Several measures in the Bill are intended to streamline investigations where inefficiencies in processes and procedures have been identified through consultation with stakeholders. This should alleviate the cost pressures imposed on businesses under investigation relative to the status quo, further minimising the likelihood that the reforms will prove overly burdensome.

### Quality of intervention decisions

94. In the interest of increasing the efficiency of the current competition regime, and therefore reducing the costs to businesses and bringing certainty to markets sooner, the Bill contains amendments which will streamline certain aspects of the CMA's markets investigation procedures. Where cases are complex, there may be an inherent trade-off between the time and resource the CMA can dedicate to a case and the speed with which the case is conducted.
95. These measures include providing the CMA with greater flexibility to narrow the scope of market investigations and a new duty of expedition applying to the CMA's competition and consumer functions. Government has recognised the risk that streamlined cases could lead to different outcomes than under the current status quo.
96. These reforms predominantly enable the CMA to take advantage of opportunities to streamline cases with discretion as opposed to introducing a statutory requirement to shorten specific parts of investigations. This means there is flexibility for the CMA to conduct cases more quickly when there is the opportunity to do so as opposed to applying pressure on the CMA to make decisions sooner or with less information.
97. Considering this, government has concluded that this risk has a low likelihood of adversely impacting the quality of the CMA's decisions, as the CMA will not be required to come to decisions more quickly or with less information for complex cases which require the full statutory timescales.

### Assumptions and uncertainty

98. The impacts of the DMCC reforms will ultimately be determined by the level of enforcement activity following implementation. This is inherently uncertain as CMA caseloads naturally fluctuate year on year with the occurrence of conduct which may be in breach of consumer or competition law.
99. This introduces uncertainty to the impacts quantified in this IA, as an especially high or low rate of enforcement following implementation may invalidate the underlying analytical assumptions which have been derived using historic trends in enforcement activity. To mitigate this risk, Government has presented suitable sensitivity ranges, based on historic fluctuation in enforcement activity and CMA expertise, to convey the uncertainty present in the analysis.

100. Additionally, whilst the level of enforcement activity will determine how expected impacts align with those observed following implementation, the underlying rationale and evidence in favour of the proposals will remain strong as variation in enforcement activity year on year is a natural feature of the regime.
101. For a full assessment of the underlying assumptions of component cost-benefit analyses please refer to the dedicated IAs published alongside this Bill summary IA.

## Impact on small and micro businesses

102. Please refer to the relevant accompanying IAs for a detailed SaMBA assessment of each policy proposal.
103. In line with RPC guidance, in this section small businesses are defined as those employing between 10 and 49 full-time equivalent ('FTE') employees and micro businesses as those employing between 1 and 9 FTE employees. For detailed assessment of the expected impact of the digital markets reforms, merger reforms, subscription trap policies and wider reforms on small and micro businesses, alongside considerations of exemptions and mitigations, please refer to the dedicated IAs published alongside this document.
104. Overall, across the DMCC Bill, the proposals are not expected to have a disproportionately adverse impact on small and micro sized businesses. In most cases it is anticipated that small and micro-sized businesses (SMBs) will rarely encounter the reformed competition and consumer regimes and therefore will not experience significant additional costs. The subscriptions traps and ADR proposals are expected to place some costs on small and micro-sized businesses, however the decision was taken not to exempt this group on the grounds of protecting consumer interests in respect to these policies.
105. The reforms to the markets and antitrust regimes are not expected to disproportionately impact small and micro-sized businesses. Adverse effects on competition generally arise from larger firms who hold significant market power, or firms with market power at a local level, and therefore small and micro sized businesses are less frequently involved in these investigations. Furthermore, small and micro-sized businesses are likely to benefit from more effective resolution of anti-competitive conduct as a result of the reforms, following the opportunity to compete and on a more level playing field. One of the groups most likely to be affected by illegal anti-competitive conduct or barriers to competition in markets is small and micro sized businesses. Therefore, a small and micro business exemption may impede casework and prove detrimental to the majority of this group who are rarely the focus of investigations.
106. Small and micro-sized businesses are less likely to be subject to merger review under the existing regulatory framework as they are far less likely to satisfy the jurisdictional thresholds required for review and are less likely to have sufficient market power for a transaction to raise competition concerns. The reforms to merger control also introduce a small merger safe harbour which exempts transactions from review where both parties have less than £10m annual UK turnover. This effectively exempts small and micro sized businesses where both parties fall into this group whilst enabling the CMA to investigate potentially harmful acquisitions of small and micro-sized businesses by much larger acquirers through the new acquirer focussed threshold. Further exemptions or mitigations have been deemed unnecessary and disproportionate on grounds of upholding competition.
107. Under the preferred policy option for the digital reforms, small and micro-sized businesses are out of scope of the proposed regulation. The scope of this regulatory regime would be SMS firms, and the DMU would use the SMS designation process to capture only the firms with substantial, entrenched market power in relation to a digital activity, giving rise to a strategic position. Under the

preferred policy option, a firm could not be designated if it has UK revenue of <£1 billion or global revenue of <£25 billion. To this end, the SMS designation process would, by design, only capture the largest firms within digital markets. Therefore, while the above criteria does not account for the number of FTE employees, it is not expected that any business with a UK revenue of at least £1bn to have less than 50 FTE employees. Consequently, it is not expected that the direct costs associated with this regime will fall on small or micro businesses. This is expected to return greater benefits to consumers without disproportionately creating a burden on smaller digital firms.

108. Similarly, disproportionate impacts of the wider consumer reforms on small and micro businesses are unlikely. Although the CMA and the courts could deploy their strengthened enforcement powers against small and micro businesses where these are uncompliant, it is not expected this would happen more so than for any other size of business. Any additional enforcement action is likely to benefit small and micro businesses as a result of overall increased compliance and a decrease in anti-competitive practices. Further, if small and micro businesses were exempt then it is possible, subject to consumer awareness, that consumers would be more inclined to shop at larger business where they feel they are more likely to be offered consumer protection, hence an exemption is undesirable. The proposed changes for protecting consumer pre-payments include a micro business exemption. There could be a higher relative impact on small and micro ADR providers from the requirement to become accredited. This could incentivise some ADR providers to exit the market and so support the policy objective of a simpler ADR landscape for consumers and businesses.

109. Table 6 below summarises each individual SaMBA assessment.

**Table 6 - SaMBA summary**

Policy	SaMBA Assessment	Reasoning
Digital markets reforms	<ul style="list-style-type: none"> <li>• No adverse impact anticipated</li> <li>• No exemption or mitigation applicable - Out of scope of regulation</li> </ul>	Whilst there might be some pass-through in regulatory costs it is expected that small and micro businesses will experience a net benefit as a result of the regime.
Reforms to merger control	<ul style="list-style-type: none"> <li>• No adverse impact anticipated</li> <li>• Partially exempt through safe harbour</li> <li>• No further mitigation on grounds of competition</li> </ul>	Small and micro sized businesses rarely encounter UK merger control. No exclusion on grounds of retaining the ability to investigate potentially harmful mergers at the local level.
Subscription traps	<ul style="list-style-type: none"> <li>• Places one-off cost on SaMB offering subscriptions</li> <li>• No exemption on grounds of consumer protection</li> <li>• Mitigation provided through exempting businesses who cannot send reminders through SMS or email communications from reminder requirements</li> </ul>	One-off costs arising from implementation of reminders, easy-exiting and improved information. No exemption on grounds of consumer protection given the number of SaMB offering subscriptions.

Reforms to markets (EA02)	<ul style="list-style-type: none"> <li>• No adverse impact anticipated</li> <li>• No exemption on grounds of competition</li> <li>• No viable mitigation identified</li> </ul>	No adverse impacts expected as market inquiries tend to involve larger businesses. No exclusion on grounds of protecting competition in local markets. It is expected that remediated AECs will benefit other businesses.
Reforms to antitrust (CA98)	<ul style="list-style-type: none"> <li>• No adverse impact anticipated</li> <li>• No exemption on grounds of competition</li> <li>• No viable mitigation identified</li> </ul>	No adverse impacts expected as only suspected illegal activity will be investigated, no exclusion necessary on grounds that all illegal conduct should be addressed regardless of business size. Remediating anti-competitive practices will benefit other businesses.
Administrative model of consumer law enforcement for the CMA and new penalty powers for the civil courts	<ul style="list-style-type: none"> <li>• No adverse impact anticipated</li> <li>• No exemption</li> <li>• No viable mitigation identified</li> </ul>	Most business costs would arise from non-compliance. No exclusion necessary on grounds that all illegal conduct should be addressed regardless of business size.
Re-write of CPRs into UK law unchanged in effect	<ul style="list-style-type: none"> <li>• No adverse impact anticipated</li> <li>• No exemption</li> <li>• No viable mitigation identified, though SaMB may benefit more from summaries of the simplifications and clarifications than larger businesses.</li> </ul>	All businesses benefit from ensuring a policy framework for consumer protection from unfair commercial practices exists as it promotes a level playing field. Therefore, in the interest of protecting consumers and businesses, all businesses should be within scope. Furthermore, the rewrite places no new obligations on businesses as it has preserved the legislative effect.
Better prepayment protections	<ul style="list-style-type: none"> <li>• Micro business exempt unless they take more than £120 from any consumer</li> </ul>	SaMB prepayment providers will have to cover protection costs for any collected monies. The exemption is deemed proportionate given the scope for consumer detriment to occur.
Alternative dispute resolution	<ul style="list-style-type: none"> <li>• Places cost on SaMB offering ADR services</li> <li>• Exemptions or mitigations would conflict with policy objective to improve consistency of ADR quality, simplify the ADR provision landscape and make it easier to consumers and businesses to find competent ADR providers</li> </ul>	Cost arises from requiring all ADR providers to become approved. There may also be some cost implications from work with regulators to raise quality standards. Not excluded on grounds of enhancing the ADR landscape.

110. Government has considered further exemptions for businesses of up to 500 employees<sup>39</sup>. Exemptions here have been deemed inappropriate as this group tends to account for a significant portion of market share across sectors and permitting them to disregard consumer and competition law would likely lead to

<sup>39</sup> <https://www.gov.uk/government/news/red-tape-cut-for-thousands-of-growing-businesses>

worsening outcomes for consumers and other UK businesses due to the market failures highlighted in this IA.

## Wider impacts

111. **Promotes innovation** – competition can directly encourage innovation as firms seek to create products or services unique in some desirable way to gain market share. Recent academic literature often refers to an 'Inverted U' shape between competition and innovation, whereby increasing competition at lower levels leads to increases in innovation. Once competition becomes especially fierce, the theory states innovation will begin to fall as the static efficiency gains from lower prices crowd out profits which can be dedicated towards research and development. Griffith and Reenen (2021), having performed a review of recent evidence conclude that 'the relationship has held up reasonably well over time, although on average the positive effect of competition still seems to dominate empirically'<sup>40</sup>. Although this implies that the effect of competition on innovation depends on the composition of a market, it does imply that competition policy should be directed towards firms with market power. Given the UK's competition regime is focussed on markets where competition is weaker, this academic evidence suggests the reforms should have an overall positive impact on innovation.
112. **Increases productivity and growth** – the UK's level of productivity has been lower than that of other advanced economies since the 1960s with the UK's productivity level more than 20% lower than other major advanced economies such as the US, France and Germany<sup>41</sup>. Though the causes of this are numerous and complex, sub-optimal levels of competition may partly contribute to this trend in some markets. This is supported by academic literature, where Gutierrez & Philippon (2019) argue that superstar firms in some sectors have become less productive over time due to the lack of competition in their markets<sup>42</sup>. The competitive process provides incentives for firms to keep prices down and to keep quality and service standards up which in turn promotes firm productivity and economic growth. The reforms should apply upwards pressure to productivity as increased competitive pressure on firm managers to allocate resources more efficiently will ensure more productive firms increase their level of market share.
113. **Improved welfare** – achieving better outcomes for consumers is at the heart of the UK's competition regime. Where the reforms create increased levels of competition in UK markets consumers will benefit from lower prices, more choice and improved quality. Ensuring consumers are treated fairly improves consumer welfare and promotes equitable outcomes, this is particularly important in the sectors providing the essential goods which consumers in vulnerable socio-economic groups rely upon.
114. **Increased consumer confidence** – Enhanced consumer rights give consumers the confidence to act freely in markets. Increasing consumer confidence encourages consumers to partake in economic activity such as spending disposable income which in turn helps to promote economic growth.

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<sup>40</sup> London School of Economics and Political Science, Centre for Economic Performance, Discussion Paper No 1818 (November 2021), R., Griffith and J., Van Reenen, Product market competition, creative destruction and innovation

<sup>41</sup> Competition and Markets Authority (2022), State of UK Competition

<sup>42</sup> G., Gutierrez & T., Philippon, Fading Stars, AEA Papers and proceedings Vol. 109 (2019)

## Potential trade implications

115. For a detailed assessment of the expected impact of the digital markets reforms, merger reforms and subscription trap policies on UK trade and investment please refer to the dedicated IAs published alongside this document.
116. Overall, the competition and consumer enforcement proposals assessed in this IA are not expected to adversely impact levels of UK trade and investment. The competition and consumer regime do not directly create any trade barriers, nor does it directly stimulate the level of trade between the UK and other countries. Government acknowledges that international businesses may take the UK regulatory climate into account when planning their trade and investment activity with the UK. That said, the Bill proposes a series of reforms to consumer and competition policy which are not expected to significantly increase the level or manner of CMA enforcement activity in a way which would impact international trade.
117. The reforms to market inquiries and antitrust largely aim to streamline and strengthen the existing regime but are not expected to significantly alter the CMA's current caseload. Consequently, although investigations will involve businesses operating in multiple jurisdictions, these reforms are not expected to affect levels of UK trade and investment. The reforms do include measures to facilitate greater international co-operation between the CMA and overseas authorities, however there is no evidence to inform on how this may affect trade and investment.
118. Increased powers to regulate digital markets should improve regulatory transparency through offering a clear set of rules which the competition regime currently lacks. This should result in increased regulatory coherence between jurisdictions, and subsequent reductions in trade friction. There is the potential that large, regulated firms may decide to reduce their investment in the UK given increased burdens, however this is deemed to be unlikely, and any potential investment may be replaced by smaller firms as regulation gives them a greater ability to compete.
119. The strengthened powers for the CMA to investigate consumer cases is expected to lead to additional cases undertaken. This may have an impact on businesses operating across multiple jurisdictions, but it is likely to have a negligible impact on trade and investment. Indeed, a stronger enforcement framework could increase confidence for other businesses that they would face a level playing field and so encourage trade and investment. Based on available evidence, most ADR activity is domestic (UK consumers dealing with UK ADR providers) so an impact on trade is unlikely. None of the known consumer pre-payment schemes in scope are foreign businesses, so there too an impact on trade and investment is unlikely.
120. Increased competition in UK markets will have a positive impact on producer efficiency, innovation and the range of goods available. Furthermore, higher levels of competition may place downward pressure on prices in some markets. These competition-induced benefits may promote the attractiveness of UK goods in an international setting which is beneficial to UK levels of trade. However, the sectors or exact timing of when these benefits will be felt cannot be predicted given the high degree of uncertainty present. Furthermore, these impacts are



likely to be relatively minor in comparison to other driving factors of UK trade, particularly against macroeconomic factors affecting the global economic climate.

## Public sector equality duty

121. **The Department is required to comply with the public-sector equality duty (PSED) set out in the Equality Act 2010 (“the Act”).** The PSED requires the Minister to have due regard to the need to advance equality of opportunity, eliminate discrimination and foster good relations between those with and without certain protected characteristics. The characteristics that are protected by the Act are: age, disability, gender reassignment, marriage or civil partnership (in employment only), pregnancy and maternity, race, religion or belief, sex and sexual orientation.
122. The BEIS Consumer Protection Study (2022) is a useful source of evidence for the number, nature, and impact of problems that people experience with items and services. As per Table 7, the study found that consumer experiences varied with their personal characteristics:
- **Age and subjective financial wellbeing:** Younger consumers (especially those aged 18-39) and those who reported finding themselves in a difficult financial situation were consistently more likely to experience detriment as well as higher monetised costs. These consumers were also more likely to experience higher levels of negative consequences on finances, wellbeing and emotions as a result.
  - **Gender:** men and women were similarly likely to experience detriment and there was no statistical difference in the financial cost of detriment. However, women were more likely to experience high levels of negative emotional consequences as a result of experiencing detriment.
  - **Ethnicity:** There is little evidence that ethnicity affects the likelihood of experiencing detriment or the level of the problems' financial impact. However, experiences of detriment resulting in negative consequences on wellbeing were generally more likely to be experienced by consumers with a Black, Asian, Mixed or other ethnic background.
  - **Family:** Households with children were more likely to experience detriment.
  - **Location:** the risk of detriment also varied by location, with consumers residing in England and Scotland being more likely to experience detriment. Consumers living in urban areas were more likely to have experienced detriment and this had higher levels of wellbeing and emotional impact.
  - **Education:** Those with the highest level of formal education were less likely to experience detriment but were more likely to experience higher levels of negative impact on finances. A higher share of consumers with a level of education equivalent to a university degree experienced higher levels of monetised detriment than those with an education level below university degree.
  - **Economic status:** Unemployed consumers and consumers in full-time education were more likely to experience detriment than those that are retired and also experience higher levels of negative financial and emotional impacts.

- Income: Consumers with higher incomes were more likely to experience detriment, though this effect disappeared when controlling for other factors like the diversity of items and services consumed and subjective financial wellbeing.
123. For a detailed PSED assessment concerning the digital markets reforms, merger reforms, subscription traps proposals and wider reforms please refer to the respective dedicated IAs published alongside this document.
124. The proposed amendments in the DMCC Bill predominantly apply to businesses rather than consumers. It is anticipated that the reforms will deliver significant benefits to consumers across the economy through easier exit from unwanted subscriptions, enhanced pre-payment protections, improved merger control and bolstered CMA enforcement powers across the competition and consumer regimes. The new regulations within digital markets will be applied to large businesses rather than individuals, meaning that they should not directly impact on groups with protected characteristics. It is possible that groups that engage with digital markets more than others may experience the benefits of increased competition, but these groups have not been targeted by the regulations.
125. The beneficiaries of competition and consumer enforcement will vary on a case-by-case basis, there may be a disproportionate impact on particular consumer groups due to the sector enforcement occurs in. That said, it is not expected that any intervention will lead to the detriment of any consumer group, nor any of the protected characteristics, only that some consumer groups may benefit more than others due to their proximity to a consumer or competition case.
126. In line with PSED impact assessment guidance, government has considered whether the DMCC reforms will eliminate unlawful discrimination, advance equality of opportunity or foster good relations between people who share protected characteristics. In these regards, it is not expected that any direct impacts or issues will arise as the measures do not actively discriminate any of the protected characteristics or other consumer groups. The reforms are anticipated to benefit consumers more broadly through enhanced protections, lower prices and greater choice. Considering these benefits, it has been decided that further positive action is not needed.
- 127. The matters considered in this IA do not raise any issues relevant to the public sector equality duty under section 149(1) Equality Act 2010 because the policy does not discriminate or unjustly favour any person or group of people based on their protected characteristics. Therefore, considering these considerations, government will proceed with the reforms as planned.**

Table 7: Variation of consumer detriment experiences by personal characteristics

Socio-demographic variable	Statistically significant patterns of socio-demographic variable with			
	Likelihood of experiencing detriment	(Level of) detriment's financial impact	(Level of) detriment's wellbeing impact	(Level of) detriment's emotional impact
<b>Age</b>	Yes, negative	Yes, negative	Yes, negative	Yes, negative
<b>Subjective financial wellbeing</b>	Yes, negative	Yes, negative	Yes, negative	Yes, negative
<b>Gender</b>	No	No	Not mentioned	Female more likely
<b>Ethnicity</b>	No	No	Not mentioned	Yes
<b>Maternity/family</b>	Yes	Not mentioned	Not mentioned	Not mentioned
<b>UK countries</b>	Yes	Not mentioned	Not mentioned	Not mentioned
<b>Rural/urban</b>	Yes	No	Yes, mental health	Yes
<b>Education</b>	Yes, negative	Yes, positive	Not mentioned	No
<b>Economic activity</b>	Yes, negative	Yes	Not mentioned	Yes, negative
<b>Household income</b>	Yes, positive	Not mentioned	Not mentioned	Not mentioned
<b>Frequency of internet use</b>	Yes, positive	No	Yes, negative	No

Source: Consumer Protection Study 2022: <https://www.gov.uk/government/publications/consumer-protection-study-2022>

## Wider justice impacts

128. This IA appraisal assumes full compliance with the requirements as per guidance. However, in some cases, enforcement may be required to enforce non-compliance; and this would in some cases require involvement from the UK justice system which would incur time and resource costs for the courts.
129. Parties involved in competition cases can appeal a case decision by the CMA at the CAT. Following from this the case may be taken to the Court of Appeal in England and Wales and the Court of Session in Scotland and then onto the Supreme Court. Given the competition reforms largely build upon the existing regime it is not expected that this will significantly alter the volume of appeals from current levels.
130. Concerning the reforms to digital markets, it is expected that the DMU will ensure that designated SMS firms comply with the regime by combining a participative approach with the use of formal powers. Through a participative approach, the DMU will engage constructively with all affected parties, resolving issues through advice and informal engagement, including in the context of conduct requirements. This will often achieve a fast and effective resolution and avoid unnecessary regulatory burdens associated with formal enforcement. However, in some cases, formal enforcement may be required to enforce non-compliance; and this would in some cases require involvement from the UK justice system which would incur time and resource costs for the courts.
131. There may also be appeals by SMS firms against measures the DMU decides to implement or merger decisions. Similarly to the existing competition regime, these may also result in additional costs, primarily to the CAT but then additional costs in higher courts if CAT rulings are appealed (some of these costs will be partially offset by court fees paid by appellants in the Court of Appeal and the Court of Session).
132. In the case of consumer enforcement, under the new administrative process for the CMA to enforce certain consumer protection laws, businesses will be able to appeal certain CMA decisions to the High Court in England and Wales and the Court of Session in Scotland. However, the establishment of the administrative process for the CMA is anticipated to reduce the need for the CMA to bring proceedings to enforce consumer protection law before the UK courts in the first instance.
133. There will be business and exchequer costs associated with these proceedings. This means the implementation of the proposed reforms will have wider justice impact implications. These exchequer costs will be explored further in a separate Justice Impact Test, prior to legislation being introduced.

## Monitoring and evaluation

134. Selected reforms proposed in the DMCC Bill, if enacted, are expected to be reviewed to assess whether they have achieved the stated objectives, and to inform future policy making. A bespoke approach will be taken towards the monitoring and evaluation (M&E) plans of each of the selected reforms as they each have a range of objectives, metrics, stakeholders and external factors which may impact the success of the policy.
135. Given these amendments will be made through primary legislation (subject to any changes during bill passage), a review is non-statutory. However, M&E is still valuable to understand the impacts of the proposals and learn lessons for future interventions in this space.
136. We have identified measures where monitoring and evaluation would be most appropriate based on:
- a. The scale of the expected impact of the measure
  - b. Whether the measure is novel or contentious
  - c. The potential for unforeseen consequences of the measure
  - d. The opportunity for responding to the evaluation findings
137. Using this framework government considers that the digital markets reforms, merger reforms and subscription traps measures would benefit most from formal monitoring and evaluation strategies.
138. The measures selected to have formal M&E strategies developed are the more impactful measures in the DMCC Bill. The wider competition and consumer measures involve smaller reforms to specific parts of the existing regime which are expected to have a far smaller impact. Although this limits the value which can be gained from a more rigorous M&E strategy, government plans to monitor the impacts of these measures through the reporting the CMA conducts on its activity.
139. For example, the CMA produces an annual impact assessment of the benefits delivered through its functions which will allow government to monitor the expected consumer benefits delivered following implementation of the reforms. The CMA also publishes the outcomes and final reports of its investigations on its website. This will enable tracking of high-level metrics including the number of cases, case timelines and whether remedies were implemented.
140. **For a more detailed description of the M&E plans of these measures please refer to the respective dedicated IAs published alongside this document.**

## Annex A – Summary of supporting Impact Assessments

141. Supporting IAs have been published alongside this document which include detailed description of the rationale, objectives and expected impacts of individual policies. In line with Better Regulation guidance, proportionate analysis has been undertaken whereby the more substantive proposals have undergone a full assessment. These IAs are listed below:

- **Annex 1:** Digital markets reforms
- **Annex 2:** Subscription traps
- **Annex 3:** Reforms to merger control

142. The less substantive measures in the Bill have undergone lighter assessments in streamlined IAs also published alongside this document. These IAs are covered in **Annex 4** and are listed below:

- Reforms to market inquiries
- Reforms to enforcement against anti-competitive conduct
- Strengthening consumer enforcement powers
- Prepayment protection
- Alternative dispute resolution
- Consumer Protection Regulations