

Consultation Response

Which? response to CMA consultation on ‘Transparency in Consumer Enforcement Cases – Draft Updated Supplementary Note’

Which? welcomes the opportunity to respond to the CMA’s updated guidance on transparency in enforcement cases. We strongly support the changes proposed in the consultation to its Supplementary Note in their entirety and view these amendments as a positive step in creating a more effective regulatory system that protects and empowers consumers. The revised Supplementary Note provides that the CMA will normally expect to identify publicly all parties which are the subject of CMA consumer enforcement action.

We strongly support Lord Tyrie’s proposals to strengthen the CMA’s competition and consumer protection regimes to ensure it is better equipped to deal with the challenges posed by the digital economy and a declining public confidence in markets.¹ We also welcome the CMA’s focus in its annual plan, as well as a recent speech by Andrea Coscelli, on getting the CMA closer to consumers by becoming a more visible and vocal enforcer and advocate of consumer’s rights.²

In the recent report “Creating a successful enforcement system for UK consumers”³, Which? highlighted the weaknesses of the current consumer enforcement regime and called for the creation of an effective enforcement toolkit that can better deal with the threats posed by the changing consumer landscape. Underpinning our recommendations for improving the current regulatory regime is a call for enhanced transparency of regulators’ decision-making processes, enforcement decisions and the relative performance of businesses.

Greater transparency as a soft enforcement tool

It is vital that regulators have effective powers to incentivise compliance and ensure the regulatory regime works for the benefit of consumers as well as responsible businesses. Recognising how greater transparency and sharing of information can support the CMA’s regulatory function under Part 8 of Enterprise Act 2002, as well as support its ambition to get closer to consumers, Which? believes that naming parties at the opening of an investigation can increase compliance and accountability, act as an effective deterrent and soft enforcement tool and build trust in the market and the regulator. We understand there might be concerns that this practice could limit the CMA in

¹ Letter from Andrew Tyrie, CMA Chair, to the Secretary of State for Business, Energy and Industrial Strategy, February 2019
<https://www.gov.uk/government/publications/letter-from-andrew-tyrie-to-the-secretary-of-state-for-business-energy-and-industrial-strategy>

² Andrea Coscelli: closer to consumers – competition and consumer protection for the 2020s, Feb 2020
<https://www.gov.uk/government/speeches/andrea-coscelli-closer-to-consumers-competition-and-consumer-protection-for-the-2020s>

³ Creating a successful enforcement system for UK consumers, Which?, Feb 2019
<https://www.which.co.uk/policy/consumers/3851/ukenforcementsystems>



the information it can share about the investigation at case opening. However, we agree with the CMA that by publicly identifying the parties subject to an investigation in a factual manner, the regulator can be more effective in instilling best practices among businesses as well as being more accountable to consumers.

The coronavirus outbreak and widespread uncertainty it has caused have resulted in a significant decline in the public's trust in some markets, such as the travel and insurance sectors, where consumer rights are not being upheld. The scale of the impact of the pandemic risks further damaging public confidence in businesses and markets in the long-term. Meanwhile, it has cast a spotlight on the need for regulatory reforms in the consumer enforcement space as envisaged in Lord Tyrie's proposals for reforms of the CMA and in the aforementioned Which? policy report.

We believe that the policy of publicly naming parties at case opening can be an effective soft enforcement tool and encourage good business behaviour in those sectors that are lacking a strong regulatory presence. It can also prove a particularly useful instrument to encourage the public to come forward with information when seeking to address consumer detriment in fast-moving and emerging markets.

In this respect, we welcomed the work being carried out by the CMA's COVID-19 taskforce which we consider as a good example of engaging with and listening closely to public concerns in the face of extraordinary and unprecedented circumstances while keeping the public updated with the action being taken. Therefore, it is important that the learnings from this work are reviewed and acted on to ensure the CMA has effective systems in place to gather and analyse information from the public.

Consistent approach across regulators

While we are pleased with the CMA changing its approach to transparency, we believe this proposal should be adopted by other regulators in the UK, such as the CAA and National Trading Standards. Consistency is key; consumers experience different challenges with the products and services they purchase and use every day, and it's important that they see those addressing this detriment and advocating for their rights as acting cohesively and consistently.

It is also important that regulators share and promote best practices in the interest of all consumers. In this regard, we call on the CMA to work with other regulators to promote best practice and the adoption of a similar approach to openness and transparency. We hope your work will prompt and motivate other enforcers to review and amend their existing policies on publicly identifying interested parties at case opening with a view to getting closer to consumers.



About Which?

Which? is the largest consumer organisation in the UK with more than 1.5 million members and supporters. We operate as an independent, a-political, social enterprise working for all consumers and funded solely by our commercial ventures. We receive no government money, public donations, or other fundraising income. Which?'s mission is to make individuals as powerful as the organisations they have to deal with in their daily lives, by empowering them to make informed decisions and by campaigning to make people's lives fairer, simpler and safer.

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