Reforming Competition and Consumer Policy

THE CONSUMER COUNCIL RESPONSE

Our reference: PD20010/3147

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1. EXECUTIVE SUMMARY

The Consumer Council welcomes the opportunity to respond to the consultation on reforming competition and consumer policy.

The Consumer Council's vision and desired outcomes for reformed competition and consumer policy is as follows:

Figure 1: Vision and Desired Outcomes

Desired Outcomes	
Competition that benefits consumers	Competition should improve consumer outcomes, and their access to and choice of affordable products and services that meet their needs, in increasingly complex markets.
Consumer protection	Reform should enable consumers to have justified confidence in markets because robust protections are in place to prevent harm.
Consumer empowerment	Reform should deliver improved transparency, increased consumer understanding, and provide consumers with greater control over their data and its use.
Consumer redress	Where problems occur consumers must have easy access to effective redress mechanisms.
Regional parity	Regardless of region, consumer detriment should not differ with a view to overall reduction, but this must be considered alongside regionalised protections and redress.

In response to this consultation the Consumer Council makes a number of proposals to support the delivery of the above vision. These are summarised below and emphasised in **bold text**. Fuller answers to the consultation questions are presented in section 3.

1.1 COMPETITION THAT BENEFITS CONSUMERS

This government policy review is driven by a focus on the promotion of a thriving free market economy. The consultation states: *"Consumer rights play an essential part in fair, free and competitive markets, providing consumers with the confidence to choose how and where they spend."*

The Consumer Council is more ambitious on behalf of consumers. **Competition should be judged by how it meets clearly defined consumer outcomes**, delivered through a well-functioning market that meets consumers' needs.

The consultation proposes numerous changes to the Competition and Market Authority's (CMA)'s role, competition regulation and consumer protection. These are some of the necessary mechanics of regulating a competitive market. What is not clear is how these will reverse the problem, highlighted in the consultation document, *"that competition in the economy may have weakened over the last 20 years."* The consultation does not explain why competition has weakened, or how and why the proposals would reverse this and address the failures of previous approaches.

As markets become increasingly more complex it is ever more important that regulatory regimes facilitate competition that benefits consumers. The intent behind promoting competition should not be simply to enable companies to grow, but also to have **markets that work in the interests of consumers** and the two are given equal status. The promotion of competition is only one lever available in making markets work for consumers, with significant impact also being provided through consumer-focused legislation and regulation.

We would encourage the adoption and extension by government of the recommendation from the Digital Competition Expert Panel and advice from the Digital Markets Taskforce for an **overarching statutory duty to further the interests of consumers and citizens**. This should be extended to government's work across all markets.

Clarity should be provided on how consumer benefit will be measured and monitored, and for which consumers the policies are aiming to provide benefit linked to measurable consumer outcomes. Simply increasing competition is not the same as delivering consumer benefit – **market activity is not an adequate measure of competition working for consumer benefit**. Having an outcomes based approach will also allow CMA and government to undertake more meaningful monitoring and assessment of the performance of markets from the consumer perspective, the effectiveness of the CMA, and identify and respond to emerging risks to consumers.

The Consumer Council is encouraged by government's intention to improve the speed of CMA action. We **support the proposed single stage-market inquiry tool along with the proposal to give the CMA powers of enforcement through an administrative model**. This would enable the CMA to undertake faster and potentially more, and more meaningful market studies. In combination with ex post activity with **greater powers for interim measures, stronger penalties for companies that fail to comply with remedies, and tougher penalties** for companies that obstruct cases this could be the beginnings of a positive package of measures to the benefit of consumers. It would also remove some inefficiency of the current two-stage process, reducing costs to both businesses and the CMA.

The single stage market inquiry tool must **not reduce the overall capacity of other regulatory bodies** to assess and investigate consumer detriment and oversee redress in sector-specific markets.

There should be **increased consumer input to the CMA's work** through improved opportunities for consumer evidence submissions and a standstill period following CMA decisions to allow the opportunity for consumer bodies to respond.

Changes to the CMA panel must ensure that it is more representative, and include **regional expertise and consumer specialists** to complement economic and legal perspectives.

All regulators must have the ability to keep up with developments in digital markets given the growth in the use of digital platforms across most markets. Indeed, **regulators must be required to instil good corporate behaviour by companies within their regulatory purview that are adopting or enhancing digitalisation**.

It is paramount that **the independence of the CMA is not undermined, inhibited or compromised** in any way. The Consumer Council notes that the consultation proposes a significantly more active role for government in shaping competition policy and the CMA's future work. It is not clear how government will balance the proposal to provide an annual strategic steer for the CMA with its long-standing policy of independence for competition authorities, and the importance of fair and impartial investigations. Our preference is for strategic **priorities to be determined by CMA**. Any government strategic direction must contain a **break clause** giving clear instruction that the CMA is free to break from this.

1.2 CONSUMER EMPOWERMENT

It is important to ensure consumers can maximise the opportunities market competition can provide. The Consumer Council welcomes the consultation's intention that: *"Our consumer rights framework must continue to support consumers into the future, allowing them to benefit from new technology and new business models, and feel empowered to make the best decisions available to them."*

The Consumer Council also welcomes the proposals to empower consumers to enforce their own rights, and to empower consumers and traders to resolve disputes between themselves.

To ensure that consumers can make the most of these opportunities they require improved information, advice, support and most importantly, good stewardship of regimes designed to put consumers' interests to the fore. **Consumer education must be emphasised and resourced** to support consumer empowerment.

We welcome the **proposals to strengthen the protections on subscription contracts and pre-contract information. This information should be prescribed** and additional explicit consent required at the end of a trial period or at contract renewal.

Consumers must be provided with greater understanding of how their data are being used by companies, and provided more straightforward but greater control over how their data are used and who profits as a result. The level of control digital platforms have over data means they can act as a gatekeeper, with significant control over consumer choice and access to products and services, without consumers being aware how their behaviour is being shaped. Firms should be required to have systems and controls in place to prevent the abuse of hyper personalisation and the

manipulation of consumer vulnerabilities, something we are calling for in our response to the consultation on 'A new pro-competition regime for digital markets.'

Resources should be put towards programmes and initiatives for business education.

1.3 CONSUMER PROTECTION

The Consumer Council agrees that *"consumer policy is vital in underpinning consumer confidence so they can engage in those markets in an assured manner, knowing that they have a strong set of legal rights that will be respected and enforced."*

However, consumer confidence is not a good barometer by itself. There are many examples of consumers being provided with false confidence when making purchases, investments or subscriptions, and suffering harm when things went wrong.

The miss-selling scandals across financial products including pensions, endowments, critical illness cover and payment protection insurance show how consumers can have confidence in a product or service but still suffer widespread and significant harm. Consumers must enjoy justified confidence in the market provided and supported by robust regulatory and legislative oversight and protections.

This policy review by government provides the opportunity to ensure the regulatory regime acts in the consumer interest. The review of compliance requirements is correct, but caution must be employed so that **simplification does not result in an erosion of consumer protections**. **The level of compliance and the protections they afford should be positively biased towards the consumer**.

We want to see the betterment of consumer rights. We must improve the protections afforded to consumers in historic markets, put protections in place in markets that have emerged this century, and enable regulators to take a pro-active approach to consumer protection and empowerment.

We would have concerns over changes to consumer law purely to deliver simplification. It is right to review compliance and reporting requirements, but this **must not translate to an erosion or removal of consumer protections**. A system should be established to evaluate the impacts of the possible removal. The opportunity should be taken to undertake reviews of regulations to **identify simpler ways of ensuring that consumers and businesses are given clear information** and enabling businesses to comply.

This consultation proposes some very positive initiatives that have the potential to improve consumer protection via proactive pro-consumer interventions. For example, the proposals to make it as easy for consumers to exit a contract as to enter it and auto-renew reminders are very welcome. The Consumer Council would encourage the further extension of these positive proposals into other areas of consumer interaction in markets.

Regulatory bodies must be resourced adequately and enabled to focus their attention on anticipating consumer detriment and implementing measures to prevent detriment arising.

We see the **benefits of making investigations and enquiries more streamlined**. More detail is needed on the safeguards the CMA will put in place to ensure allowing businesses to make binding commitments to stop an investigation are not harmful to the consumer by preventing a full investigation into potential anti-competitive practices.

The CMA should implement a **range of safeguards** for the acceptance of binding commitments, with **increased financial penalties if commitments are not met**.

We do not support providing holders of full immunity in the public enforcement process with additional immunity from liability for civil damages. Allowing businesses to benefit from acting in a cartel to restrict competition is an unacceptable proposal, which further prevents consumers from recouping the loss caused to them by businesses' involvement in a cartel.

While we understand the difficulties in proving cartel activity without insider knowledge, **whistle-blowing should be incentivised through reduced liability, not full immunity.**

Ambitious thinking is required when considering consumer interactions with emerging markets, particularly where financial transactions do not exist. While consumers may not spend money on many of our largest online platforms they still consume content. In such instances consumers are often 'paying' for this service by providing third parties access to their data and consequently require significantly greater protections than those they are currently afforded.

Fake online reviews and drip pricing should be banned, and added to the Consumer Protection from Unfair Trading Regulations (CPR) list of automatically unfair practices, along with **greater controls and transparency over commissioned reviews and paid search results**. We also want to see more research into the use and impacts of negative online nudge techniques.

We agree that **savings clubs should be included within the scope of the Financial Services Compensation Scheme**. The Consumer Rights Act 2015 should be amended to mandate that consumer prepayment schemes have means to safeguard customer funds through insurance or trust accounts.

These amendments should provide **future flexibility to allow for the easier inclusion of different types of payment schemes**. Consumers should also be **advanced up the hierarchy of creditors**, so that if a prepayment scheme does go bust, consumers have a greater chance of recouping their lost money.

1.4 CONSUMER REDRESS

Access to consumer redress must be easy for all and we **support the immediate plans to strengthen consumer alternative dispute resolution (ADR) and widen its scope.** ADR schemes must be free to use.

There is a clear responsibility to ensure all consumers have **equal and easy access** to redress. We see the benefits that online technology has to improve access to ADR, for consumers and businesses alike, but know additional help will be needed to support consumers in vulnerable circumstances. BEIS should **consider British Standard 18477 accreditation for the ADR Competent Authority and accredited ADR providers.**

While the Consumer Council supports the proposals for improving consumer awareness and signposting, voluntary trader redress and ADR, these **proposals do not go far enough in the powers they provide to protect consumers or the range of markets covered**.

BEIS should consider **giving consumer organisations in Northern Ireland the power to bring collective actions** as a further route to collective consumer redress.

1.5 REGIONAL PARITY

The Consumer Council recognises government is committed to ensuring the UK remains an integrated economy and that *"a coherent approach to market access will drive efficient supply chains and opportunities for business growth and ensure fair price distribution for consumers."*[1]

The achievement of fairness for consumers may necessitate different approaches to consumer protections across UK regions. This is of particular relevance in Northern Ireland where the small size of our regional market, geographical separation from the remainder of the UK market, an EU land border and diverse regulatory regimes create a unique operating landscape for businesses, and different challenges for consumer access, opportunities, and protections.

Northern Ireland consumers have less disposable income, lower levels of financial capability and confidence in managing money, higher numbers of disability claimants, and higher average debt per household, meaning consumers require additional protection, information and support to access competitive markets, participate in those markets, and avail of market opportunities.

Northern Ireland requires Northern Irish adaptations. Given the unique circumstances of Northern Ireland the application of UK-level rules creates two substantive risks that need to be managed.

First, the thresholds for market investigations will not capture the scale and dynamics of the Northern Ireland market. Second, consumer detriment can be significant in Northern Ireland but relatively small in comparison to the UK, meaning issues of Northern Irish consumer detriment struggle to be prioritised on a UK basis.

As a result, scalable regional models for investigation, research, and enforcement are important to deliver benefit and meet the needs of Northern Ireland consumers.

BEIS should develop **regionally specific criteria for CMA market investigations** in the form of a 'geographical step' with lower thresholds for Northern Ireland. The proposed thresholds for CMA merger investigations and the creation of the £10m safe harbour will require adaptation to account for the characteristics and dynamics of Northern Ireland's regional market.

Regionally-specific proportionality criteria should be introduced for the setting of CMA annual priorities and investigatory considerations. These criteria should be based on **improved understanding and analysis of potential consumer impact and local market conditions** to ensure Northern Ireland's consumers are provided with the same levels of CMA protection.

The CMA should provide **better monitoring and public reporting of regional market conditions**. This enriched local understanding and localised indicators will help deliver more effective competition and consumer policy. It will identify **additional relevant features of the market, and of the behaviour of consumers and firms**.

The Consumer Council would welcome discussions with the CMA on how a Northern Ireland regional lens would help the CMA prioritise its work and interventions to have the greatest impact on those groups experiencing detriment.

[1] UK internal market (HTML page) - GOV.UK (www.gov.uk)

1.6 DEVELOPMENT OF PROPOSALS

The consultation contains a large number of proposals covering a wide range of possible changes to competition and consumer policy, and the role of the CMA. Our response is based on the information contained within the consultation document. As more detailed proposals are developed by government these should be consulted on, particularly before legislation is progressed.

We would **welcome further and ongoing engagement and consultation with BEIS and the CMA** to help ensure the effectiveness and practical application of proposals in Northern Ireland.

2. THE CONSUMER COUNCIL

The Consumer Council is a non-departmental public body (NDPB) established through the General Consumer Council (Northern Ireland) Order (The Order) 1984. Our principal statutory duty is to promote and safeguard the interests of consumers in Northern Ireland.

We are an insight-led, evidence based organisation:

- Providing consumers with expert advice and confidential guidance.
- Engaging with government, regulators and consumer bodies to influence public policy.
- Empowering consumers with the information and tools to build confidence and knowledge.
- Investigating and resolving consumer complaints under statutory and non-statutory functions.
- Undertaking best practice research to identify and quantify emerging risks to consumers.
- Campaigning for market reform as an advocate for consumer choice and protection.

We have specific statutory duties in relation to energy, postal services, transport, water and sewerage, and food affordability and accessibility. These include considering consumer complaints and enquiries, carrying out research, and educating and informing consumers.

Our non-statutory functions educate and empower consumers against unfair or discriminatory practices in any market from financial services to private parking charge notices. Across all our areas of work, we pay particular regard to consumers:

- who are disabled or chronically sick;
- who are of pensionable age;
- who are on low incomes; and
- who live in rural areas.

We are a designated body under the Rural Needs Act 2016 and Section 75 of the Northern Ireland Act 1998. In this role, we aim to ensure government policies recognise consumer needs in rural areas, and promote equality of opportunity and good relations across a range of equality categories.

We are committed to ensuring positive outcomes for consumers. We are a designated super-complaints body set up under the Enterprise Act 2002 and the Financial Services and Markets Act 2000 Order 2013.

Under both these Acts, the Consumer Council can, if we believe a market in the United Kingdom (UK) is, or appears to be, significantly harming the interests of consumers, raise a super-complaint on behalf of consumers to the following regulators:

- Civil Aviation Authority (CAA)
- Financial Conduct Authority (FCA)
- Office of Rail and Road (ORR)
- Payment Systems Regulator (PSR)
- The Competition and Markets Authority (CMA)
- The Office of Communications (Ofcom)
- The Office of Gas and Electricity Markets (Ofgem)
- The Utility Regulator (UR)
- Water Services Regulation Authority (Ofwat)

Under the Gas and Electricity Licence Modification and Appeals Regulations (Northern Ireland) 2015, we can also make an appeal to the CMA, if we believe a modification by the UR to the licence of a gas or electricity provider is detrimental to the interests of consumers.

We use a set of eight guiding principles (Figure 2) developed by the United Nations to:

- assess where the consumer interest lies; and
- develop and communicate our policies, interventions and support.

These provide an agreed framework through which we approach regulatory and policy work.

Figure 2: Consumer protection principles

The principles ensure we apply a consistent approach across our statutory and non-statutory functions, and in all our engagement with consumers and stakeholders.

They serve and protect consumers and set out the minimum standards expected from markets when delivering products or services, including in digital markets, in Northern Ireland. They also frame our policy position and approach to resolving consumer disputes with industry, offering a straightforward checklist to analyse and validate outcomes, in particular amongst vulnerable groups.

3. RESPONSE TO CONSULTATION QUESTIONS

Below we answer the consultation questions. Some questions have been grouped. At the start of each section of this response document is a table that sets out the Consumer Council's view of the key consumer outcome related to the topic under discussion. The focus areas deemed most important are highlighted green, those that have relevance are coded grey.

3.1 COMPETITION POLICY

3.1.1 Government strategic steers and state of competition reports

Desired Outcomes				
Competition that benefits consumers	**Consumer Empowerment**	**Consumer Protection**	**Consumer Redress**	**Regional Parity**
Incorporates our response to:				
Q1. What are the metrics and indicators the CMA and government could use to better understand and monitor the state of competition in the UK?				
Q2. Should the CMA have a power to obtain evidence specifically for the purpose of advising government on the state of competition in the UK?				
Q3. Should government provide more detailed and regular strategic steers to the CMA?				

The Consumer Council welcomes the proposal to provide the CMA with a new power to obtain the information it needs for the specific purpose of preparing its State of Competition reports. The ability to gather information to understand and report on the market is fundamental to regulate markets so they work in the interests of consumers.

Metrics and indicators used to understand and monitor the State of Competition must be designed with the intention to capture information that facilitates improvements in consumer opportunities, access, and outcomes. Market activity does not automatically equal consumer benefit.

Regionally-specific reports, including horizon scanning, should be produced. The CMA and the Office for the Internal Market focus on impacts to the UK economy. **More localised understanding is needed** to complement the national picture. **Localised indicators** of market conditions and consumer impacts are needed. For example, the Consumer Council is working with the ONS on developing a NI Consumer Price Index (CPI). Such indicators will help the CMA understand the state of competition and target its investigations to tackle consumer detriment.

The CMA should work with partner organisations to bolster its understanding. We would welcome conversations with the CMA on how we can work together to better its understanding of the Northern Ireland consumer.

CMA reports should focus on the resultant impact on consumers from the state of competition and activities undertaken or planned to improve consumer outcomes.

Government proposes to provide annual strategic steers to the CMA. It is not clear how government will balance this proposal with the long-standing policy of independence for competition authorities, and the importance of fair and impartial investigations.

It is paramount that **the independence of the CMA is not undermined or inhibited**. Our preference is for strategic **priorities to be determined by the CMA**. The CMA should make recommendations to government about identified priorities outside of its remit. Any government strategic direction must contain a **break clause** giving clear instruction that the CMA is free to break from this.

We note the political difficulty the CMA may have in departing from any government strategic steer, and the difference in the threshold of evidence that is likely to exist between the research undertaken to develop the steer and the evidence base required to deviate from it. This could be resource intensive for the CMA and divert focus.

We also note the research and evidence held by the CMA means it is likely to be best placed to determine areas of real or potential consumer detriment for investigation.

Regardless of whether the strategic priorities of the CMA are guided by government or determined independently it is important that regional context and priorities are considered within priority development. This does not mean that a quota of regional priorities must be embedded in the CMA forward work planning process, but **regionally-specific criteria for potential consumer impact should be introduced for the setting of CMA annual priorities and investigatory considerations to ensure Northern Ireland's consumers are provided with the same levels of CMA protection**. The CMA should be required to demonstrate and evidence that it has had due regard to the needs of each UK region in its strategic planning and the programming of work.

3.1.2 Market studies

Desired Outcomes				
Competition that benefits consumers	**Consumer Empowerment**	**Consumer Protection**	**Consumer Redress**	**Regional Parity**
Incorporates our response to:				
Q4. Should the CMA be empowered to impose certain remedies at the end of a market study process?				
Q5. Alternatively, should the existing market study and market investigation system be replaced with a new single stage market inquiry tool?				
Q6. Should government enable the CMA to impose interim measures from the beginning of a market inquiry?				
Q7. Should government enable the CMA to accept binding commitments at any stage in the market inquiry process?				

The CMA should be empowered to impose certain remedies at the end of a market study. To avoid market disruption, unless there is an overwhelming case for immediate action, structural market remedies should be reserved for use at the conclusion of a market investigation.

The Consumer Council prefers the proposed new single-stage inquiry tool. This will provide more flexibility in time frames, allowing faster conclusions. A more agile and flexible CMA can better resolve and remedy anti-competitive practices in order to further benefit the consumer. It will remove the inefficiency of the current two-stage process, reducing costs to both businesses and the CMA by removing the duplication of the current process. **A single stage market inquiry tool should not preclude other regulatory bodies from conducting their own investigations**.

The Consumer Council recognises that there are consumer benefits from the implementation of interim measures prior to the conclusion of an investigation. However, we note that this would not be subject to any independent adjudication.

The CMA should be able to **accept binding commitments during a market inquiry**. We see value in providing the CMA the opportunity to accept binding commitments in order to resolve competition concerns more quickly if it leads to more issues being addressed by the CMA on behalf of consumers.

The consultation does not provide clarification on what interim measures may be taken. BEIS should provide further information on the range of interim measures it foresees being applicable.

Whilst binding commitments are beneficial to addressing immediate and ongoing consumer harm, we are concerned that they could become a method to keep the CMA at arm's length and/or prevent the CMA discovering consumer detriment that would only become apparent as a result of a full investigation. This could lead to binding commitments being used to avoid more significant penalties that could arise from a full CMA inquiry.

It would be good practice to have **interim measures subject to additional safeguards**. We support the proposal that measures should require the approval of the Competition Appeal Tribunal before they became binding. BEIS should consider the following safeguards:

- **BEIS should consider whether time limits would be beneficial for binding commitments**. For example, within [X] weeks of the opening of an inquiry/investigation, the firm may make a binding commitment to the CMA. If this is not initiated by the firm within the [X] weeks, then they will lose their ability to make early binding commitments. In our view, this will restrict the firm from waiting to just before the CMA publishes its inquiry/investigation results before making such commitments.
- A firm under inquiry/investigation should **only be allowed one opportunity to make binding commitments to the CMA**. Whilst the "stop the clock" initiative proposed by the government is advantageous to firms, we are concerned that this may become a delaying mechanism. If the CMA is flooded with binding commitment suggestions, it will ultimately delay and hinder the CMA inquiry/investigation.
- **Interim measures should be published** to allow consumers to understand action being taken by a firm to address immediate market concerns.
- **Ongoing reports**: following the acceptance of a binding commitment from the firm, **the firm should be legally required to provide a report to the CMA** setting out the steps it has taken to implement the binding commitment. Failure to do so should **trigger a re-start of the initial investigation and a penalty uplift**, with financial penalties for the firm's failure to deliver the binding commitments. These fines should be in addition to the maximum 10% of global turnover for breaches of consumer protection law.

We would welcome further clarity as to how a balance could be found between the necessity for safeguards and the benefits of enabling the CMA to conduct a full investigation when it is clear that immediate interim measures are required to prevent consumer detriment.

Desired Outcomes				
Competition that benefits consumers	**Consumer Empowerment**	**Consumer Protection**	**Consumer Redress**	**Regional Parity**
Incorporates our response to:				
Q8. Will government's proposed reforms help deliver effective and versatile remedies for the CMA's market inquiry powers?				
Q9. What other reforms would help deliver more efficient, flexible, and proportionate market inquiries?				

The Consumer Council welcomes the recognition that flexible remedy tools are important to the on-going effectiveness of the CMA's work, particularly in digital market reforms. We acknowledge the proposed reforms should help deliver effective and versatile remedies, including consideration of powers that require businesses to participate in implementation trials, allowing the CMA to test how best to implement its remedies. These proposals should enable swift implementation of learning and good practice by the CMA to the benefit of both consumers and industry.

The CMA should have expanded powers to periodically review, and if necessary, vary the remedies it imposes. This should complement the additional versatility proposed for CMA reforms and ensure that the CMA is able to act promptly to protect consumers where detriment is apparent.

Desired Outcomes				
Competition that benefits consumers	**Consumer Empowerment**	**Consumer Protection**	**Consumer Redress**	**Regional Parity**
Incorporates our response to:				
Q10. Should the current jurisdictional tests for the CMA's merger control investigations be revised? If so, what are your views on the proposed changes to the jurisdictional tests?				
Q11. Are there additional or alternative reforms to the current jurisdictional tests for the CMA's merger control investigations that government should be considering?				
Q12. What reforms are required to the CMA's merger investigation procedures to deliver more effective and efficient merger investigations?				

The Consumer Council recognises that the revised turnover thresholds are intended to help reduce the potential burden of merger control on small businesses and that proposal brings the merger thresholds in line with inflation.

We hold concerns as to the impact these proposals could have in Northern Ireland where mergers within our smaller market could have a significant impact on the market but may not be picked up by the proposed thresholds and 'safe harbour' of less than £10m.

This could lead to potential harm to consumers in Northern Ireland in particular, as they may be at risk of unaddressed monopolistic or market dominance behaviours on certain products and services because the CMA would be prevented from assessing issues due to the 'safe harbour'.

Therefore, we would welcome **BEIS development of a 'geographical step' with lower thresholds for merger controls in Northern Ireland**.

We understand that this may also require a regional adjustment or relaxation of the CMA target to deliver at least £10 of consumer benefit for every £1 of taxpayer funding it receives. This target

return threshold places a further barrier against investigations in Northern Ireland's smaller markets and risks excluding issues of Northern Irish consumer harm.

The Consumer Council sees both value and risk in the proposals to reform the CMA's investigative procedures, to make them quicker and more efficient by allowing the CMA to agree binding commitments earlier during a merger investigation and/or request automatic reference to Phase 2.

3.1.3 Streamlining CMA panel decision making

Desired Outcomes				
Competition that benefits consumers	**Consumer Empowerment**	**Consumer Protection**	**Consumer Redress**	**Regional Parity**
Incorporates our response to:				
Q13. Should the CMA Panel be retained, but reformed as proposed above? Are there other reforms which should be made to the panel process?				

The Consumer Council agrees that **the CMA panel should be retained**, and welcomes the proposals for a **smaller dedicated pool of panel members** to speed up cases and the revision to their role. We recognise that this should facilitate both flexibility and but also, importantly, consistent decision making, to the benefit of consumers.

The Consumer Council also welcomes the proposal to make panellists full time. It is important the CMA panel reflects our diverse society and our diverse consumer needs. We hope that providing panellists full time employment and a set income will be a step towards achieving diversity in membership.

The revised role for panel members should also allow greater administrative flexibility in investigations.

Panel membership must include consumer and regional expertise to complement economic and legal perspectives.

3.1.4 Territorial scope and immunity

Desired Outcomes				
Competition that benefits consumers	**Consumer Empowerment**	**Consumer Protection**	**Consumer Redress**	**Regional Parity**
Incorporates our response to:				
Q14. Should the jurisdictional requirements of the Chapter I and Chapter II prohibitions be changed so that they apply to all anticompetitive agreements which are, or are intended to be, implemented in the UK, or have, or are likely to have, direct, substantial, and foreseeable effects within the UK, and conduct which amounts to abuse of a dominant position in a market, regardless of the geographical location of that market?				
Q15. Should the immunities for small agreements and conduct of minor significance be revised so that they apply only to businesses with an annual turnover of less than £10 million?				
Q16. If the immunity thresholds are revised for agreements of minor significance, should the immunity apply to a) any business which is party to an agreement and which has an annual				

turnover of less than £10 million or b) only to agreements to which all the business that are a party have an annual turnover of less than £10 million?
Q17. Will the reforms being considered by government improve the effectiveness of the CMA's tools for identifying and prioritising investigation? In particular will providing holders of full immunity in the public enforcement process, with additional immunity from liability for damages caused by the cartel help incentivise leniency applications?

Stricter competition law is good for the long-term health of the UK economy. We agree that the jurisdictional requirements should be changed to allow for investigation regardless of geographical location.

Regionally-specific proportionality criteria for potential consumer impact should be introduced for the setting of CMA annual priorities and investigatory considerations to ensure Northern Ireland's consumers are provided with the same levels of CMA protection. The CMA's tools for identifying and prioritising investigations should include the requirement for the CMA to demonstrate and evidence that it has had due regard to the needs of each UK region in its strategic planning and the programming of work.

We are concerned that **providing immunities to businesses with an annual turnover of less than £10m would still create a relatively high threshold for Northern Ireland businesses** considering Northern Ireland's smaller market dynamics. We would welcome additional clarity from BEIS on how Chapter I and Chapter II prohibitions will be enacted to provide a high level of protection to Northern Ireland consumers.

We support that the arrangements for the withdrawal of immunities remain in place.

The proposal to provide full immunity in the public enforcement process with additional immunity from liability for civil damages is deeply concerning as it is potentially detrimental to consumers. This would allow businesses to benefit from acting in a cartel and prevent consumers recouping the losses caused to them by the businesses' involvement in the cartel. We understand the difficulties in proving cartel activity without insider knowledge, but we do not think that this information should come at the expense of the consumer getting redress. **Whistle-blowing should be incentivised through reduced liability based on the scope and detail of the information provided, but we do not think this should extend to full immunity**.

3.1.5 Evidence gathering powers

Desired Outcomes				
Competition that benefits consumers	**Consumer Empowerment**	**Consumer Protection**	**Consumer Redress**	**Regional Parity**
Incorporates our response to:				
Q18. Will the CMA's interim measures tool in Competition Act investigations be made more effective by (a) changing the procedures for issuing decisions and/or (b) changing the standard of review of appeals against the decision?				
Q19. Will the reforms in paragraphs 1.170 to 1.174 improve the effectiveness of the CMA's tools for gathering evidence in Competition Act investigations? Are there other reforms government should be considering?				

See comments above on proposals for CMA interim measures.

We support the increase in powers for the CMA to gather evidence to inform its work and for businesses to preserve evidence.

Streamlining the settlement process

Desired Outcomes				
Competition that benefits consumers	**Consumer Empowerment**	**Consumer Protection**	**Consumer Redress**	**Regional Parity**
Incorporates our response to:				
Q20. Will government's proposals for the use of Early Resolution Agreements help to bring complex Chapter II cases to a close more efficiently? Do government's proposals provide the right balance of incentives between early resolution and deterrence?				

See comments above on proposals for CMA interim measures and binding commitments. If Early Resolution Agreements are introduced for complex Chapter II cases, **similar safeguards to those proposed above for interim measures must also be introduced** to prevent the early closure of the investigatory process being gamed by businesses. Safeguards should include arrangements for the withdrawal of immunities or reduced penalties should Early Resolution Agreements be breached or firms continue or repeat behaviours detrimental to consumers.

3.1.6 Voluntary redress

Desired Outcomes				
Competition that benefits consumers	**Consumer Empowerment**	**Consumer Protection**	**Consumer Redress**	**Regional Parity**
Incorporates our response to:				
Q21. Will government's proposals to protect documents prepared by a business in order to seek approval for, and operate, a voluntary redress scheme from disclosure in civil litigation encourage the use of these redress schemes?				
Q22. Will government's proposed reforms help to speed up the CMA's access to file process and by extension the conclusion of the CMA's investigations?				
Q23. Should government remove the requirements in the CMA Rules on the decision makers for infringement decisions in Competition Act investigations?				
Q24. What is the appropriate level of judicial scrutiny for decisions by the CMA in Competition Act investigations?				
Q25. What is the appropriate level of judicial scrutiny for decisions by the CMA in relation to non-compliance with investigative and enforcement powers, including information requests and remedies across its functions?				
Q26. Are there reforms which fall outside the scope of government's recent statutory review of the 2015 amendments to Tribunal's rules which would increase the efficiency of the Tribunal's appeal process for Competition Act investigations?				

We welcome measures to encourage businesses to offer voluntary redress schemes. This can provide speedier resolution for the consumer and avoid time consuming and costly legal proceedings. It is right that the CMA is still required to approve a business' proposals for a voluntary redress scheme.

We are not in a position to provide comment on the admissibility or protection of evidence in civil litigation.

We support proposals to deliver more efficient use of confidentiality rings in Competition Act investigations.
CMA internal processes for decision making in Competition Act investigations must be robust, fair and transparent. We support changes that will help the CMA to be more responsive and stronger in its enforcement against unlawful, anticompetitive conduct.

3.1.7 Stronger investigative powers

Desired Outcomes				
Competition that benefits consumers	**Consumer Empowerment**	**Consumer Protection**	**Consumer Redress**	**Regional Parity**
Incorporates our response to:				
Q27. Will the new investigative powers proposed help the CMA to conclude its investigations more quickly? Are the proposed penalty caps set at the right level? Are there other reforms to the CMA's evidence gathering powers which government should be considering?				
Q28. Will the new enforcement powers proposed improve compliance? Are the proposed penalty caps at the right level? Are there other reforms to the CMA's enforcement powers which government should be considering?				
Q29. What conditions should apply to the CMA's use of investigative assistance powers to obtain information on behalf of overseas authorities?				

The CMA should be given new, stronger powers to obtain information and to sanction companies that do not comply with CMA information requests.

Following the acceptance of a binding commitment from the firm, the firm should be legally required to provide a report to the CMA setting out the steps it has taken to implement the binding commitment. **Failure to do so should trigger a re-start of the initial investigation and a penalty uplift**, with financial penalties for the firm's failure to deliver the binding commitments. Guidelines should be published by the CMA on how fines will be set. These additional penalties should not be capped. These fines should be in addition to the maximum 10% of global turnover for breaches of consumer protection law.

We support the penalties for non-compliance with an information request as proposed. The **current caps do not provide a strong enough financial incentive** to ensure businesses comply with CMA investigations. We also support the Government's proposals for Director responsibility and accountability for information submissions to CMA investigations.

To better provide consumer protection in an increasingly global market, the proposals to provide the CMA with stronger powers to facilitate more effective cooperation and collaboration between the UK competition authorities and their international counterparts are welcome.

3.2 CONSUMER RIGHTS

3.2.1 Subscription contracts

Desired Outcomes				
Competition that benefits consumers	Consumer Empowerment	Consumer Protection	Consumer Redress	Regional Parity
Incorporates our response to:				
Q.30 Do you agree with the description of a subscription contract set out above? How could this description be improved?				

Currently, we do not believe there to be any legal definition for a subscription contract in Northern Ireland. As such, general contractual principles shall apply to these types of contract. Redefining what a subscription contract is will not materially change a consumer's rights as the merits and pitfalls of any such a contract will not change.

The definition should make clear that mixed contracts, goods and services, or goods and digital content for example, are also within the definition. The definition should also **make clear subscription contracts require some form of renewal** - whether automatic or with the express agreement of the consumer.

Desired Outcomes				
Competition that benefits consumers	Consumer Empowerment	Consumer Protection	Consumer Redress	Regional Parity
Incorporates our response to:				
Q31. How would the proposals of clarifying the pre-contract information requirements for subscription contracts impact traders?				
Q32. Would it make it easier or harder for traders to comply with the pre-contract requirements? And why?				
Q33. How would expressly requiring giving consumers to be given, in all circumstances, the choice upfront to take a subscription contract without auto-renewal or rollover impact traders?				

Clarifying and prescribing the requirements for pre-contract information for subscription contracts will help traders. It will make it easier for them to comply, as it will remove the potential for confusion or misunderstanding about what information should be provided. This will ensure consumers have clear information about what they are entering, the subscription duration, price per billing period, renewal information, how the contract can, or will, be renewed and how they can bring the contract to an end.

These proposals will have an impact on traders, but we believe that any cost in altering online information would be relatively small in comparison to the value of the online subscription market.

We believe this pre-contract information about the key terms and features of a subscription contract should be prescribed. This information should be provided both at an early stage in the process and immediately before the consumer places their order. Non provision of this key information should be added to Schedule 2 of The Consumer Rights Act 2015 Part II list of 'grey area' terms that may be deemed to be unfair.

Consumers may not read terms and conditions, and may miss vital information about subscriptions[2]. Therefore, there is real risk to the reputation of traders, and a greater potential to generate complaints (which are a cost to the business), if they hide behind copious terms and conditions.

Allowing the consumer to make fully informed choices is a priority in providing consumer protection. We agree with that the key information should be bought clearly to the attention of the consumer, it should not be hidden or interspersed within more general marketing communication. **This information about subscription costs, renewal periods and methods to renew (or not) should be presented in prominent "Key Facts" boxes**.
We would welcome proposals from BIES on what pre-contract information should be prescribed.

These proposals would benefit the consumer. While providing pre-contract information at an early stage is helpful, many consumers may simply scroll past on their way to subscribing. However, a requirement to 'opt-in' to auto-renewal may prevent traders from exploiting consumers' over-confidence in their ability to remember to cancel a subscription, or from pre-selecting options more favourable to the trader in order to influence consumer behaviour. 'Opting-in' should also prevent traders from creating numerous laborious hoops for the consumer to 'jump through' in order to cancel the service.

Desired Outcomes				
Competition that benefits consumers	**Consumer Empowerment**	**Consumer Protection**	**Consumer Redress**	**Regional Parity**
Incorporates our response to:				
Q34. Should the reminder requirement apply in the circumstances where: (i) the contract will auto-renew or roll-over, at the end of the minimum commitment period, onto a new fixed term only, or (ii) the contract will auto-renew or roll-over at the end of the minimum commitment period				
Q35. How would the reminder requirement impact traders?				

We agree that **traders should be expressly required to remind consumers before the end of any commitment period**. The requirement to provide a reminder should apply in both circumstances.

We agree that the reminder should be **sent in reasonable time and by the consumer's preferred method of contact**. We would recommend that guidelines on 'reasonable time' are provided to traders.

These proposals will have an impact on traders but, we believe that any cost in altering online information would be relatively small in comparison to the value of the subscription market. Businesses should not fear giving consumers a clear notification with the opportunity to renew, or from giving them clear information about when auto-renewal will take place, and easy to use cancellation options.

The FCA has introduced welcome new rules in the home and motor insurance markets to prevent price walking (loyalty penalties), with easier methods of cancellation. BEIS should consider what steps need to be contained in its proposals to provide similar protections in other subscription and renewal contracts.

[2] Misleading « free » trials and subscription traps for consumers in the EU - Publications Office of the EU (europa.eu)

Desired Outcomes				
Competition that benefits consumers	Consumer Empowerment	Consumer Protection	Consumer Redress	Regional Parity
Incorporates our response to:				
Q36. Should traders be required, a reasonable period before the end of a free trial or low-cost introductory offer to (i) provide consumers with a reminder that a "full or higher price" ongoing contract is about to begin or (ii) obtain the consumer's explicit consent to continuing the subscription after the free trial or low cost introductory offer period ends?				

We believe that both options should require clear information to be provided. **Explicit consumer consent should be required at any point where the trial/low-cost period ends or a contract auto-renews**.

Desired Outcomes				
Competition that benefits consumers	Consumer Empowerment	Consumer Protection	Consumer Redress	Regional Parity
Incorporates our response to:				
Q37. What would be the impact of proposals regarding long-term inactive subscriptions have on traders' business models?				
Q38. What do you consider would be a reasonable timeframe of inactivity to give notice of suspension?				

The notice provisions proposed above should also help reduce this risk of inactive subscriptions. It will be important that any final notice to end a subscription is very clear about what is proposed, and the consequences, and makes proper provision for the return of funds that are due to the consumer.

The time period will depend upon the type of contract, but **a set minimum number of contact attempts with the consumer should be required before contract cancellation**.

Desired Outcomes				
Competition that benefits consumers	Consumer Empowerment	Consumer Protection	Consumer Redress	Regional Parity
Incorporates our response to:				
Q39. Do you agree that the process to enter a subscription contract can be quicker and more straightforward than the process to cancel the contract (in particular after any initial 14 day withdrawal period, where appropriate, has passed)?				
Q40. Would the easy exiting proposal, to provide a mechanism for consumers that is straightforward, cost-effective, and timely, be appropriate and proportionate to address the problem described?				

We agree that entering a subscription contract is often significantly easier and quicker than the cancellation process, and often involves the consumer being made more aware of the benefits, rather than the commitments. An easy exit process, with no exit fees, would be appropriate and proportionate to rectify this imbalance.

It should also not be assumed that all consumers have internet access. Alternative means of cancellation should be provided, with no cost to the consumer.

Desired Outcomes				
Competition that benefits consumers	Consumer Empowerment	Consumer Protection	Consumer Redress	Regional Parity
Incorporates our response to:				
Q41. Are there certain contract types or types of goods, services, or digital content that should be exempt from the rules proposed and why?				

No contract types should be exempt from the requirement for pre-contract information or reasonable time notifications of the right to cancel or renew. The proposals require clear information to be given to enable consumers to make informed choices. We do not think any contract provider should be exempted from such a requirement.

Exemptions from auto-renewal proposals should be controlled. A list of exempted products should be set out to avoid confusion, and remove the potential for traders to claim consumer welfare grounds for auto-renewal of non-essential goods and services.

3.2.2 Fake reviews

Desired Outcomes				
Competition that benefits consumers	Consumer Empowerment	Consumer Protection	Consumer Redress	Regional Parity
Incorporates our response to:				
Q42. Should government add to the list of automatically unfair practices in Schedule 1 of the CPRs the practice of (a) commissioning consumer reviews in all circumstances or (b) commissioning a person to write and/or submit fake consumer reviews of goods or services or (c) commissioning or incentivising any person to write and/or submit a fake consumer review of goods or services?				
Q43. What impact would the reforms mentioned in Q42 have on a) small and micro businesses, both offline and online b) large online businesses and c) consumers?				
Q44. What 'reasonable and proportionate' steps should be taken by businesses to ensure consumer reviews hosted on their sites are 'genuine'? What would be the cost of such steps for businesses?				
Q45. Should government add to the list of automatically unfair practices in Schedule 1 of the CPRs the practice of traders offering or advertising to submit, commission or facilitate fake reviews?				

Government should add Q42 (c) to Schedule 1 of the CPRs. Government should **ban the practice of traders offering or advertising to submit, commission or facilitate fake reviews**.

The commissioning of reviews should not be deemed unfair under CPRs. Not all commissioned reviews are automatically fake. Such reviews should be required to **clearly disclose up front that the review was commissioned**. Disclosure should also be a requirement for businesses that offer 'review plans' allowing traders to purchase consumer reviews in return for payment.

We do believe that sites that host reviews should **take all reasonable and proportionate steps to identify and remove fake reviews**. Many review sites are hosted by large online businesses that have the technology to identify fake reviews, particularly when questionable reviews have come from the same source in the past. These sites should have accessible mechanisms for fake reviews to be identified and reported (by consumers and traders) and then have the tools, through digital and human interaction, to quickly and proactively remove fake reviews and take action to block the sources of these reviews.

3.2.3 Preventing online exploitation of consumer behaviour

Desired Outcomes				
Competition that benefits consumers	**Consumer Empowerment**	**Consumer Protection**	**Consumer Redress**	**Regional Parity**
Incorporates our response to:				
Q46. Are consumers aware of businesses using behavioural techniques to influence choice that affect their purchasing decisions? Is this a concern that they would want to be addressed?				

We would be concerned that many consumers are not aware that these techniques are used. Increasingly sophisticated data gathering and analysis has exponentially increased the ability to segment the market and tailor, adapt and deploy these techniques to different types of consumers or support individualised offerings. These techniques may present even greater risks to consumers in vulnerable circumstances who could be more adversely affected by these practices.

We welcome the proposals to **champion 'fairness by design' principles in how online transactions are presented**. We would welcome further clarity from BEIS on how this will be progressed.

The proposals are not detailed or sophisticated enough given the speed and scale of changing online retail. This would appear to be an area where more research is needed. The Government's Behavioural Insights Team should investigate the negative use of 'nudge' techniques in online markets and their potential impact, and make recommendations on how regulators can be more agile and responsive to this risk.

We are **particularly concerned about the growth of online scams and fraud**. The issue of scams is pervasive; it has become an issue that impacts every consumer and needs a national response. We understand that a number of existing regulators already play a role in regulating digital markets. It is clear more action is required to co-ordinate efforts that protect consumers in digital markets. In our response to the BEIS consultation 'A new pro-competition regime for digital markets' we are asking that the proposed Digital Markets Unit plays a key role in regulating online conduct.

Desired Outcomes				
Competition that benefits consumers	**Consumer Empowerment**	**Consumer Protection**	**Consumer Redress**	**Regional Parity**
Incorporates our response to:				
Q47. Do you think government or regulators should do more to address (a) 'drip pricing' and (b) paid-for search results that are not labelled accordingly, as practices likely to be breached under the CPRs?				

More should be done to address both practices and both should be considered breaches under CPRs.

3.2.4 Balancing burdens on business

Desired Outcomes				
Competition that benefits consumers	Consumer Empowerment	Consumer Protection	Consumer Redress	Regional Parity
Incorporates our response to:				
Q48. Are there examples of existing consumer law which could be simplified or where we could give greater clarity, reducing uncertainty (and cost of legal advice) for businesses/consumers?				
Q49. Are there perverse incentives or unintended consequences from our existing consumer law?				
Q50. Are there any redundant or unnecessarily burdensome requirements to provide information or other reporting requirements, which burden businesses disproportionately compared to the benefits they bring to consumers?				

We would have concerns over changes to consumer law purely to deliver simplification. It is right to review compliance and reporting requirements, but this **must not translate to an erosion or removal of consumer protections**. The opportunity should be taken to undertake reviews of regulations to identify simpler ways of ensuring that consumers and businesses are given clear information and enabling businesses to comply.

From our research (here) and our ongoing outreach work providing education and information on consumer law directly with businesses in Northern Ireland, we know that businesses find it difficult to fully understand and to keep up to date with consumer law. Additionally, consumers often cite businesses as their first port of call in terms of advice on consumer rights creating the risk that incorrect information and advice is being provided, followed and reinforced.

We would support efforts to provide greater clarity and improved information to businesses. Given the different consumer and business environment in Northern Ireland any information would need to be fully cognisant of the regionally-specific context, for example our Guide to Consumer law for Businesses.

3.2.5 Strengthening prepayment protection for consumers

Desired Outcomes				
Competition that benefits consumers	Consumer Empowerment	Consumer Protection	Consumer Redress	Regional Parity
Incorporates our response to:				
Q51. Do you agree that these powers should be used to protect those using "savings" clubs that are not currently within scope of financial protection laws and regulators?				
Q52. What other sectors might new powers regarding prepayment protections be usefully applied to?				

As advance payments become more common with the growth of online retail, greater regulation of products and services subject to prepayment is needed. **We agree that savings clubs, including supermarket saving stamps, should be included within scope of financial protection laws**. Amending the Consumer Rights Act 2015 would provide necessary legislative powers to mandate that consumer prepayment schemes have means to safeguard customer funds through insurance or trust accounts.

Amendments to the Consumer Rights Act to extend prepayment protections should provide **future flexibility to allow for the easier inclusion of different payment schemes** to be added to the protected list, as advance payments become more common and different schemes are formed.

We would also consider that best practice would be to give consumers added protection by **advancing them up the hierarchy of creditors**, so that if a prepayment scheme does go bust, customers have a greater chance of recouping their lost money.

3.2.6 Contract formation and transfer of ownership

Desired Outcomes				
Competition that benefits consumers	**Consumer Empowerment**	**Consumer Protection**	**Consumer Redress**	**Regional Parity**
Incorporates our response to:				
Q53. How common is the practice of using terms and conditions to delay the formation of a sales contract?				
Q54. Does the practice of using terms and conditions to delay the formation of a sales contract cause, or have the potential to cause, detriment to consumers? If so, what is the nature of the detriment or likely detriment?				

The Law Commission's report published in April 2021 noted the widespread practice among online retailers of using terms and conditions to delay the formation of a sales contract until goods are dispatched.

Clarifying the legal position on contract formation would benefit consumers, and this work should be prioritised. We believe **the strongest position for the consumer would be contract formation upon payment**. This would prevent consumers being put at risk of making payments but a retailer entering liquidation between payment, dispatch and delivery. For online retail contract formation should be on confirmation of the order from the retailer, at which point payment is taken from the consumer. This would avoid situations where the consumer is left in a void due to retailer liquidation, and also ensures that the retailer is not bound to a contract it couldn't fulfil from the outset.

Further to this, clarification of the law in this area would also strengthen existing protections, such as the ability of consumers to claim a refund under the Consumer Credit Act 1974 if they have paid for goods but not received them.

Traders should be required to state explicitly at the pre-contract stage what their terms and conditions are on the formation of contract and refunds/returns.

3.3 CONSUMER LAW ENFORCEMENT

3.3.1 Empowering the CMA to enforce consumer law directly

Desired Outcomes				
Competition that benefits consumers	**Consumer Empowerment**	**Consumer Protection**	**Consumer Redress**	**Regional Parity**
Incorporates our response to:				

Q55. Do you agree with government's proposal to empower the CMA to enforce consumer protection law directly rather than through the civil courts?
Q56. What would be the benefits and drawbacks of the CMA retaining the same or similar enforcement scope under an administrative model as it has under the court-based, civil enforcement process under Part 8 of the EA 02?

We agree that the CMA should be able to enforce consumer law directly. This would create a model that provides fast and efficient action against businesses that infringe consumer protection laws and cause consumer detriment.

See also our comments on Trading Standards Service below (question 74).

The administrative model should be **legally required to consider input from consumer interest bodies in its enforcement actions**.

It is sensible for the CMA to work under Part 8 of the Enterprise Act 2002 (EA 02). This would ensure clarity and consistency for regulators, consumers and businesses regarding the applicable law.

3.3.2 Decision making process

Desired Outcomes				
Competition that benefits consumers	Consumer Empowerment	Consumer Protection	Consumer Redress	Regional Parity
Incorporates our response to:				
Q57. What processes and procedures should the CMA follow in its administrative decision-making to ensure fair and proportionate administrative decisions?				
Q58. What scope and powers of judicial scrutiny should apply in relation to decisions by the CMA in consumer enforcement investigations under an administrative model?				

The CMA should consider the following additional procedures in its administrative decision-making:

- **Consumer interest bodies shall be granted leave to submit evidence** to the administrative body to allow the body to assess impacts that decisions may have on the consumer.

- The consultation does not include any proposed method for consumers to appeal the decisions of the CMA where the CMA has decided to not take any further action against a business. This oversight will have a detrimental impact on consumers. **A decision made by the CMA should be followed by a set standstill period to allow consumer bodies and other interested bodies to respond or appeal the decision** of the CMA to the CAT or a specialist body. This allows consumer interest groups to fully assess the impact a decision by the CMA will have on consumer interests and limiting the appeals process to consumer interest groups shall not unduly burden the appeals chamber with appeals.

- **The CMA should be fully transparent in its decision making processes and publish its decisions**, including decisions and rationale to not pursue action against a business. All decisions by the CMA shall be published.

As under EA 02, we would expect the CMA to consult and to seek undertakings before taking formal enforcement action.

Regional tests of proportionality should be applied to the setting of CMA annual **priorities to the investigations undertaken by the CMA.** Based on **improved understanding and analysis of local market conditions** this must include tests of proportionality of consumer impact in different regional markets. The effects of competition are felt locally by consumers, so the CMA needs better intelligence and more sophisticated analysis of the local economy, local market conditions, local level impacts and regional consumer detriment.

The market intelligence unit within the CMA should be enhanced to provide **better monitoring and public reporting of regional market conditions**. This enriched local understanding will help deliver more effective competition and consumer policy and improved decision making. It will identify additional relevant features of the market, and of the behaviour of consumers and firms. In 2018, the OECD[3] began to explore whether a gender lens might help deliver a more effective competition policy. **The Consumer Council would welcome discussions** with the CMA on how a similar Northern Ireland regional lens would help the CMA prioritise its work and interventions to have the greatest impact on those groups experiencing detriment.

There should be an appeals process available to those who are the subject of CMA enforcement action. The scope and powers of judicial scrutiny set out by government should apply to provide a robust and appropriate independent appeals process.

There should be an **equal right for consumers to appeal the decisions of the CMA**. Unfortunately, no method has been proposed for consumers to appeal the decisions of the CMA, or where the CMA has decided to not take any further action against a business. This asymmetry - where businesses can appeal CMA decisions but consumers cannot- should be addressed (see above).

Desired Outcomes				
Competition that benefits consumers	Consumer Empowerment	Consumer Protection	Consumer Redress	Regional Parity
Incorporates our response to:				
Q59. Should appeals of administrative CMA decisions be heard by a generalist court or a specialised tribunal? What would be the main benefits of your preferred option?				

We support the proposal for a specialised tribunal approach to hear appeals of administrative CMA decisions. Specialist tribunals exist in the UK justice system including Land Tribunal, Tax Tribunals and Employment Tribunals. Specialised tribunals should lead to speedier decisions, ensuring that a business cannot continue to engage in an unfair practice whilst waiting for its appeal to be heard, reduce costs, and avoid adding to the burden of cases awaiting High Court judgment.

Specialised tribunals should include consumer expertise to assess impacts decisions may have on the consumer, and when appropriate be convened on a **regionally-specific basis** similar to current practice for land or tax tribunals.

[3] Gender inclusive competition policy - OECD

3.3.3 Empowering sector regulators to enforce consumer law directly

Desired Outcomes				
Competition that benefits consumers	Consumer Empowerment	Consumer Protection	Consumer Redress	Regional Parity
Incorporates our response to:				
Q60. Should sector regulators' civil consumer enforcement powers under Part 8 of the EA 02 be reformed to allow for enforcement through an administrative model? What specific deficiencies do you expect this to address?				

In principle we would support other sector regulators having enforcement powers under an administrative model. Generally, consumers must enforce their rights themselves through complaint, legal redress or reporting to Trading Standards. Consumers can find it difficult to obtain information about how to do this. Many consumers see court action as too expensive or daunting and ADR for their claims is sporadic in availability, type and quality. Providing administrative enforcement powers would increase regulatory agility and efficacy, increase consumer protection and help consumer access to efficient redress schemes.

3.3.4 Strengthening sanctions

Desired Outcomes				
Competition that benefits consumers	Consumer Empowerment	Consumer Protection	Consumer Redress	Regional Parity
Incorporates our response to:				
Q61. Would the proposed fines for non-compliance with information gathering powers incentivise compliance? What would be the main benefits, costs, and drawbacks from having an option to impose monetary penalties for non-compliance with information gathering powers?				

Most consumer protection legislation imposes a lesser penalty for a business that fails to provide information when requested to so. This provides a perverse incentive for a business to fail to provide information, with the sanctions being less than the principal offences that they may be committing. Legitimate businesses have nothing to fear from this sanction which is beneficial to consumer protection.

We agree the **CMA should be able to enforce fines for non-compliance with information gathering directly** under the administrative model. We look forward to seeing the statutory guidance setting out the relevant criteria for calculating and imposing penalties.

Desired Outcomes				
Competition that benefits consumers	Consumer Empowerment	Consumer Protection	Consumer Redress	Regional Parity
Incorporates our response to:				
Q62. What enforcement powers (or combination of powers) should be available where there is a breach of a consumer protection undertaking to best incentivise compliance?				
Q63. Should there be a formal process for agreeing undertakings that include an admission of liability by the trader for consumer protection enforcement?				

Q64. What enforcement powers should be available if there is a breach of consumer protection undertakings that contain an admission of liability by the trader, to best incentivise compliance?

As we have already indicated, we believe that enforcement powers should include consultation and the use of undertakings prior to any administrative fines being raised, unless the situation is an urgent one with, potentially, high levels of consumer detriment.

3.3.5 Improving alternative dispute resolution

Desired Outcomes				
Competition that benefits consumers	**Consumer Empowerment**	**Consumer Protection**	**Consumer Redress**	**Regional Parity**
Incorporates our response to:				
Q65. What more can be done to help vulnerable consumers access and benefit from Alternative Dispute Resolution?				

We **support the immediate plans to strengthen consumer ADR and widen its scope**. We look forward to working with BEIS and the CMA to ensure alignment with our own statutory responsibilities in energy, transport, water and sewerage and postal services, as well as any considerations under the General Consumer Council (Northern Ireland) Order 1984.

We also look forward to engaging with government on its more wide-ranging and fundamental reform of ADR.

Access to consumer redress must be easy for all. Some consumers will need extra help and support in accessing any ADR and progressing their complaint. Government must stress that the priority remains on complaints being resolved satisfactorily first time by businesses, to avoid consumers having to access ADR.

There is a clear responsibility for all accredited ADR providers to ensure equal access for all consumers to their services. ADR providers and the Competent Authority should work with the established advice sector to better understand the needs of consumers in vulnerable circumstances. The consultation notes that government will champion 'fairness by design' principles on how online transactions are presented (paragraph 2.46). These same principles should be applied to the design and delivery of expanded ADR schemes.

We have requested the Utility Regulator makes British Standard 18477 'Inclusive Service Provision – Requirements for identifying and responding to consumer vulnerability' a mandatory licence condition for utility companies it regulates in Northern Ireland. **BEIS should consider a similar requirement for BS18477 accreditation for the Competent Authority and accredited ADR providers** in order to provide a high core standard of service, to help consumers in vulnerable circumstances access and benefit from ADR.

We see the benefits that online technology has to improve access to ADR, for consumers and businesses alike, but there is a trade-off between this and ensuring proper access for consumers who do not have online access, or who cannot work online at all or without appropriate assistance. Online ADR schemes should be required to follow the recommendations of the World Wide Web Consortium (Accessibility - W3C), particularly Web Content Accessibility Guidelines version 2.

Desired Outcomes				
Competition that benefits consumers	**Consumer Empowerment**	**Consumer Protection**	**Consumer Redress**	**Regional Parity**
Incorporates our response to:				
Q66. How can regulators and government balance the need to ensure timely redress for the consumer whilst allowing businesses the time to investigate complex complaints?				
Q67. What changes could be made to the role of the 'Competent Authority' to improve overall ADR standards and provide sufficient oversight of ADR bodies?				
Q68. What further changes could government make to the ADR Regulations to raise consumer and business confidence in ADR providers?				

Government must continue to stress that the **priority remains on complaints being resolved first time to avoid consumers having to access ADR**.

In 2020-2021, the Consumer Council dealt with over 10,000 consumer enquiries and complaints. We have timeframes for responses from companies, which differ by sector. These time-frames are published and are confirmed to the consumer at the raising of a complaint. Deviations from these timeframes are experienced in more complex cases to allow organisations time to investigate fully. Consumers understand the need to balance timeliness with investigation. In these circumstances **clear communication to the consumer of the amended timeline is crucial**. These time-frames are monitored with cases managed closely to ensure timely redress.

We struggle to see how universally-suitable timeframes could be set for ADR schemes. These will need to be established by sector. Timeframes should be published as part of improved consumer ADR information, with clear communication and explanation of any required extensions.

As the consultation notes, the ADR landscape is sporadic but also overly cluttered. We would support streamlining to provide for one consumer ADR provider in each sector. As a minimum, there should be a **single branded entry point** for people wishing to access ADR on consumer matters.

Business adherence to ADR timeframes should be monitored by the Competent Authority. Repeat or persistent non-adherence should be examined, with steps agreed to deliver complaint resolution within established timeframes.

The Competent Authority should be required to carry out robust oversight of accredited ADR bodies. In particular, the assessment should include the fitness, as well as the competence, of those running the body and their ADR Officials. The Competent Authority should also ensure that accredited ADR providers have sufficient mechanisms in place to support the needs of consumers in vulnerable circumstances (see above our consideration of British Standard 18477).

Desired Outcomes				
Competition that benefits consumers	**Consumer Empowerment**	**Consumer Protection**	**Consumer Redress**	**Regional Parity**
Incorporates our response to:				
Q69. Do you agree that government should make business participation in ADR mandatory in the motor vehicles and home improvements sectors? If so, is the default position of requiring businesses to use ADR on a 'per case' basis rather than pay an ADR provider on a subscription basis the best way to manage the cost on business?				

Q70. How would a 'nominal fee' to access ADR and a lower limit on the value of claims in these sectors affect consumer take-up of ADR and trader attitudes to the mandatory requirement?
Q71. How can government best encourage businesses to comply with these changes?

Given the financial outlay involved in motor vehicles and home improvements **we support the principle of mandatory ADR for these sectors**. We see real benefit in having sole sectoral ADR providers. We would require more information on how the schemes would be established, resourced and enforced, particularly given the volume of business and the number of traders involved. For example, the sanctions that would be put in place to ensure that all businesses sign up for their sectoral ADR provider.

BEIS should continue to **look at other sectors for mandatory ADR**, for example the private (home) rental sector.

If single, sectoral schemes are to be adopted, we believe that these should all be Ombudsman Schemes and meet the standards of the Ombudsman Association.

ADR schemes should be free for the consumer to use. The Institute of Consumer Affairs notes the experience of its members that a nominal fee would not deter vexatious complaints. These complaints should be relatively easy to investigate and dismiss at an early stage in any ADR process. A fee of any kind could deter consumers, particularly those on lower incomes, from taking their case to ADR. We see the proposal of a nominal fee as a disincentive for consumers to use an ADR Scheme and one that should not be introduced.

Business payment for ADR schemes is a financial decision for a business based upon the options available.

Desired Outcomes				
Competition that benefits consumers	**Consumer Empowerment**	**Consumer Protection**	**Consumer Redress**	**Regional Parity**
Incorporates our response to:				
Q72. To what extent do you consider it necessary to open up further routes to collective consumer redress in the UK to help consumers resolve disputes?				
Q73. What impact would allowing private organisations and consumer organisations to bring collective redress cases in addition to public enforcers have on (a) consumers, and (b) businesses?				

There is no provision within Northern Irish law for class action against another party. If numerous parties have the same interest in a claim, proceedings can be brought by one party as a representative of all (this is known as a representative action). Such a representative action requires leave of the court. To allow collective actions within Northern Ireland courts would require major legislative overhaul outside the scope of this consultation. There would also need to be specific legislative change to provide a working mechanism for collective redress. Presently, this is done on a scheme by scheme basis.

Giving consumer organisations the ability to bring collective consumer redress in Northern Ireland would help deliver regional parity, and strengthen the level of protection and redress available. We would welcome further conversations with BEIS as to how this could be developed and delivered in Northern Ireland.

3.3.6 Trading Standards enforcement

Desired Outcomes				
Competition that benefits consumers	Consumer Empowerment	Consumer Protection	Consumer Redress	Regional Parity
Incorporates our response to:				
Q74. How can national enforcement agencies NTS and TSS best work alongside local enforcement to tackle the largest national cases of criminal breaches of consumer law?				

Larger cases of consumer harm can run over several years, over different jurisdictions and place significant financial and legal risk to enforcement bodies. We are aware of concerns from Northern Ireland Trading Standards Service (NITSS) of its ability to resource all of its enforcement requirements and the Penrose report identified the enforcement gap. To provide effective enforcement wider considerations are needed than the working relationships between local and national level enforcement agencies. Adequate resourcing is required, alongside legislative changes to give National Trading Service (and NITSS) the legal status to be given enforcement powers.

Effective local enforcement is essential. We need a well-resourced enforcement regime while recognising there will never be the resources to police everything. **We also need to educate and empower consumers so they know their rights and are confident when entering into contracts for goods and services**. This will require resourcing and the expertise of various consumer bodies. Strong networks of consumer bodies already exist across the UK. Government should engage with these networks.

3.3.7 Giving business the right support to comply with consumer protection law

Desired Outcomes				
Competition that benefits consumers	Consumer Empowerment	Consumer Protection	Consumer Redress	Regional Parity
Incorporates our response to:				
Q75. Does the business guidance currently provided by advisory bodies and public enforcers meet the needs of businesses? What improvements could be made to increase awareness of consumer protection law and facilitate business compliance?				

Effective business education can improve compliance in many areas, avoid problems and show businesses the value of resolving consumer disputes. As stated above, from our research (here) and our ongoing outreach work providing education and information on consumer law directly to businesses in Northern Ireland, we have concluded that businesses find it difficult to fully understand and to keep up to date with consumer law. Additionally, consumers often cite businesses as their first port of call in terms of advice on consumer rights, creating the risk that incorrect information and advice is being provided, followed and reinforced.

We would support efforts to provide greater clarity and improved information to businesses. Given the different consumer and business environment in Northern Ireland any information would need to be fully cognisant of the regionally specific context, for example our Guide to Consumer law for Businesses.

4. CONCLUSION

To make markets work in the interests of consumers the new competition and consumer policy regime must:

- Provide clarity on the consumer outcomes competition policy is aiming to deliver.
- Provide benefits by promoting competition that improves consumer opportunities, access and outcomes.
- Ensure robust consumer protection is built in which prevents consumer harm and provides quick and effective redress.
- Establish a more agile regulatory framework better able to predict and respond in increasingly complex and global markets.
- Give the required powers and resources to the CMA to uphold and enforce competition and consumer policy effectively.
- Give parity through regionally-specific adjustments for Northern Ireland.

We would welcome further ongoing engagement and consultation with BEIS and the CMA to help ensure the effectiveness and practical application of proposals in Northern Ireland.

5. CONTACT DETAILS

To discuss the Consumer Council's consultation response, submitted on 15 October 2021, please contact [redacted]

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