Reforming Competition and Consumer Policy

Consultation

The British Vehicle Rental and Leasing Association (BVRLA) represents the demand side of the automotive industry. Our members engage in vehicle rental, leasing and fleet management. BVRLA members own and operate more than five million cars, vans and trucks. They spend more than £30 billion upgrading their fleets each year and are responsible for buying around 50% of new vehicles sold annually in the UK, including 83% of vehicles manufactured in the UK for sale in the UK. The vehicle rental and leasing industry supports over 465,000 jobs, adds £7.6 billion in tax revenues and contributes £49 billion to the UK economy each year.

The BVRLA and its members welcome the opportunity to comment on this Government consultation on reforming competition and consumer policy. We are pleased the Government is taking steps to foster healthy competition and growth in the market. Broadly, we are supportive of plans contained within the consultation to provide regulators with stronger and more flexible powers to tackle anti-competitive conduct and harms in markets. We welcome proposals to develop the provision and uptake of ADR services in our sector as a successful mediative tool, of which consumers should be made fully aware.

Consultation questions

Competition Policy

Whilst we agree in principle with reforms being enacted on competition policy, we believe more granularity is required to expressly articulate how these revisions enable good outcomes for the consumer. Some aspects of the proposals introduce punitive measures for bad behaviour in markets, especially in the forms of civil penalties and fines. We do not believe that a purely disciplinary approach is the most successful at deterring anti-competitive conduct as it does not create a consultative relationship between firms and regulators. An open relationship is the best route to ensuring firms can meet Government's aims, instilling consumer trust in businesses and delivering the best consumer outcomes. Proposals to increase fines on firms of up to 10% of global turnover for consumer law breaches feels particularly aggressive. As a global comparison, the EU has a 4% cap.

Further guidance is required on how these fines and powers will be deployed with respect to anti-competitive conduct to ensure improved consumer protection and outcomes. Moreover, where measures are proposed to reduce inefficiencies by streamlining procedures, elements of due process may be removed for affected firms. This approach may not always ensure fair treatment of firms. We are more in favour of a non-adversarial regime, modelled at reconciling error and ingraining lasting change to anti-competitive behaviour.

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?

By condensing the market inquiry process into a single stage and/or removing the requirement to consult on a market investigation within the first six months, this avoids consultative stages with both affected parties. Additionally, expediting the process by imposing remedies at the end of a market study seems premature, once again removing the scope for discussion with involved firms. Whilst reforming this process may tackle inefficiencies, it may remove an aspect of fairness for involved companies in terms of due process.

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?

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As indicated above, where certain procedures are streamlined, elements of due process may be removed. The proposals around Early Resolution Agreements for businesses under investigation exemplifies this as they require businesses to accept the CMA's proceedings and findings from the investigation without contestation, in addition to making a compulsory commitment toward its future conduct and a settlement payment in return for the closure of the investigation. It is unclear how this approach tackles consumer harms sooner and more effectively. It seems to use the possible levels of fines to rapidly conclude investigations and not foster a culture of compliance.

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?

We believe tougher monetary penalties of this nature are not always the best route to compliance. The threat of heavy fines and more CMA powers could reduce dialogue between firms and the regulator. Firms could start to adopt much more conservative positions given the scale of possible negative impacts and reduced process, creating a chilling effect for offerings that could not be in the best interests of consumers. Clearer guidance is needed on how these fines and powers will be deployed in practice.

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?

More granularity is again required to clarify how the imposition of fines and monetary penalties achieves good outcomes for the consumer, which should be the single motivating factor underpinning the reform of competition policy, as opposed to taking measures solely for the purposes of creating a more punitive competition regime.

Consumer Rights

Q30-41: Subscription models

BVRLA members consider subscription models to be adequately covered by the Consumer Contracts Regulations 2013. Additionally, we would be concerned with excessively protective legislation over these types of contract. Rather than taking the approach of treating all consumers by the standards of the lowest common denominator (with exceptions to vulnerable customers), we would urge the Government to acknowledge and accept that the technical abilities and digital literacy of consumers are generally improving. As subscription models are very common, and increasingly so, it is excessive to mandate precisely how businesses are permitted to operate on this basis, provided that pricing and information about renewal and cancellation is sufficiently transparent and easily accessed.

A one-size-fits-all approach is not appropriate – a long subscription term and automatic renewal with more complex cancellation requirements is far more onerous when the subscription fee is high than when it is low, and when a subscription service is used on a one-off or occasional basis rather than daily. Although the harms of consumers becoming "locked in" to high-cost low usage subscriptions should be addressed, the changes proposed are currently inappropriately "broad brush". Any new regulation should provide sufficient focus on the complexity of the market offerings and recognise the abilities of consumers. For example, the regulation could only apply to services which are less than £100 per month, which would therefore exclude our members who offer subscriptions.

Q42-Q45: Fake reviews

We agree that fake reviews go against ethical business practices and could mislead consumers, therefore strengthening regulation is appropriate. However, placing the onus on businesses to take steps to ensure that reviews originate from real customers may be excessively burdensome, especially for SMEs and smaller

firms. There are also concerns about quantifying exactly which reviews can be viewed as "fake". We believe the following should instead be addressed:

A. commissioning a person to submit a fake review of a good or service and
B. traders offering to submit or commission fake reviews

If these are dealt with, we believe it would be sufficient to address this concern in the first instance. Additionally, some burden should be placed on websites such as Trust Pilot to have a good process for removing fake reviews, as a common complaint from our membership is that it is difficult to remove fake reviews on these sites.

Q47: Do you think government or regulators should do more to address 'drip pricing' that is not labelled accordingly, as practices likely to be breached under the CPRs?

Regulators should do more to address 'drip pricing' as this represents one of the harms that can have a large impact upon consumers and negatively affect consumer trust in a whole sector, even when other firms do not entertain this practice. Furthermore, drip pricing can affect healthy competition within business as firms are falsely advertising their product and/or services as cheaper than they are in reality. This produces a negative feedback cycle as this adversely affects competition within that sector, which in turn causes further harm for consumers as their level of choice is then reduced.

However, the focus should be on increased enforcement of existing measures rather than the introduction of additional regulation. Drip pricing is adequately covered in the Consumer Contracts Regulations 2013. Pricing on a business's own websites or websites under their control is also adequately addressed by the Advertising Standards Agency in Rules 3.18 and 3.19 of the CAP Code. Therefore, more should urgently be done to enforce these existing legal protections and make consumers more aware of their existing rights and available recourse, before additional regulations are created.

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?

Whilst the existing Consumer Rights Act 2015 legislation contains sufficient clarity, we believe other aspects of consumer law need simplification and consolidation. Firstly, we would welcome a thorough user-friendly guide to consumer rights to be made available at a trusted source to clarify the Consumer Contracts Regulation 2013. Currently, the plethora of "protections" and how to access them is unwieldy and possibly confusing for consumer, so a guide or central repository would be a sensible solution and could greatly assist consumers in understanding their rights and how to enforce them. The current gov.uk page falls short of this (https://www.gov.uk/consumer-protection-rights). Firms report that often it appears consumers generally do not have a good understanding of their rights as a consumer and are most guided by feelings of unfairness, rather than their rights.

As more and more vehicles are leased through online platforms, it is also important that distance selling is reformed to make it clearer for consumers and firms. Multiple different regulations current govern distance selling, including the Financial Services (Distance Marketing) Regulations 2004, Consumer Credit (Disclosure of Information) Regulations 2010, Consumer Credit Act 1974 and the FCA's Consumer Credit sourcebook (CONC 11). These distance selling rules govern the sale of credit at a distance, while the sale of the vehicle itself has a different set of requirements. This makes it a very challenging space for consumers to know their rights and for businesses to fully understand their requirements. This unnecessary complexity in legislation should be reformed to improve the experience of consumers.

Q55-59: Empowering the Competition and Markets Authority to enforce consumer law directly

We would want to see far more detailed plans as to what this would look like – it is not possible to support

this based on the principle alone. It is possible to envisage circumstances where the CMA has this power but cannot provide appropriate levels of protection for consumers without being overly burdensome for businesses. For example, there would need to be a clear indication of levels of penalties to be imposed for different types/levels of infringement and determining those levels of fines cannot be left solely to authorities.

A decision maker with the powers envisaged must be independent and free of political pressure to ensure that businesses are not unreasonably prejudiced. We believe that the route to justice should be (1) compensation of wronged consumer and a remedial plan for infringements, (2) removal of financial advantage gained by the business, if any, for breaching consumer law and finally as a last resort (3) penalty reserved for egregious breaches. Combined with clear and transparent communications, these principles should guide the model's development.

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?

The BVRLA is broadly supportive of providing the CMA with more powers to flexibly enforce consumer law directly. However, imposing civil penalties on businesses in the form of fines, such as for non-compliance with information-gathering powers, feels particularly punitive. Although more measures should be taken to dissuade bad business practices, inflicting monetary penalties may not be the right approach to creating enduring reductions in consumer harms in the market. The sector would therefore appreciate a more mediative approach to tackling non-compliance.

Q65: What more can be done to help vulnerable consumers access and benefit from Alternative Dispute Resolution?

Alternative dispute resolution services need better signposting, particularly for vulnerable customers. This could either take the form of a website which clearly explains what an ADR provider does and which one covers which sector, or by placing a greater onus on businesses to provide details of any ADR service to their customers. Both measures could be implemented to assist vulnerable customers in accessing ADR.

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?

In practice, it is very difficult to ensure timely redress for the consumer given that complaints vary hugely in terms of their complexity. We believe the only solution is to place a shorter timescale, but with a caveat that more complex complaints are able to go over the timescale without an automatic penalty on the business.

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?

The possibility of having an independent and overarching auditor for ADR would be beneficial to the sector, provided the Competent Authority is completely independent and free from political pressure.

Q68: What further changes could government make to the ADR Regulations to raise consumer and business confidence in ADR providers?

Since its establishment over 50 years ago, the BVRLA has successfully run a conciliation service free to members and their customers who find themselves unable to resolve a dispute directly. We were approved on 24th June 2015 by the Government as a Consumer ADR body under the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015 – making BVRLA one of the first trade associations to receive this approval. A recent onsite audit by our competent authority, the Chartered Trading Standards Institute, found our service to be fair and equitable. On behalf of Leaseurope – the umbrella body for the leasing and automotive rental industries in Europe, which is composed of 45

Member Associations in 32 countries – the BVRLA also established and runs the European Car Rental Conciliation Service (ECRCS), with complaints assessed against Leaseurope's Code of Best Practice. In addition, the BVRLA works collaboratively across the consumer landscape with such partners as Citizens Advice and the Financial Ombudsman Service, who refer unregulated agreements to us for investigation.

The BVRLA believe that to improve consumer awareness of ADR in a cost-effective way, the Government must work with consumer organisations such as Which?, Trustpilot - the online review community and Martin Lewis' Money Saving Expert. Whilst the majority of complaints we investigate are referred to us by our members or by customers using an internet search, the BVRLA is seeing a trend of complaints referred to us by such consumer bodies. Given the reach of these organisations and their high levels of consumer trust, consumer champions could act as strategic partners to improve consumer awareness of ADR. In addition, a website portal that would serve as a 'one stop shop' where consumers could find all the ADR schemes available in different sectors and could click on a link to the relevant ADR provider would be useful. We recognise that an online dispute resolution portal already exists via the European Union, but we don't feel that this portal is the most accessible or user-friendly. Post EU-Exit, the government may wish to take the opportunity to create its own UK-specific portal. Furthermore, consideration could be given to the introduction of an ADR kitemark – similar to CORGI register (now Gas Safe register) – which could enhance consumer confidence in ADRs and help raise awareness, whilst also incentivising greater business participation. Consumer awareness will be key to the effectiveness of the kitemark and this is where forming relationships with key consumer champions will be most valuable to the Government, given that financial resources for its own communications are scarce.

To improve consumer uptake of ADR, we would recommend that the Government makes it mandatory for businesses to participate in and comply with the decision reached under the relevant scheme. Currently, the law requires businesses to provide their customers with details of a relevant approved ADR body in the event that both parties fail to resolve an initial complaint, but does not require businesses to use the ADR scheme suggested by the customer. Consequently, a consumer is more likely to abandon their complaint rather than invest time and emotion in a process that could be seen as a fruitless exercise. Similarly, as indicated in the above response, the introduction of an ADR auditor would simultaneously raise business confidence in the provision of ADR services.

At the BVRLA, adhering to the decision reached by our conciliation service is a condition of membership and we are seeing an increase in the number of complaints that come to our service for resolution. Through the complaints we investigate, we identify trends and glean intelligence that helps to shape the inspection and training work we do to raise standards and share best practice. For example, our conciliation service spotted a recurring trend in complaints and passed on this intelligence to our compliance team, who then created enhanced checklists for rental websites and agreements around clarity on pricing (eg. per day, optional extras, excess) to address the issue. This cycle of learning from complaints is working, as we are seeing a decrease in the percentage of complaints upheld in favour of the complainant.

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?

We agree that business participation in ADR should be mandated in the motor vehicles sector to facilitate ease of access to customer redress, although we would welcome more detail on how this would work in practice with detailed consideration of the implications. In any event it would seem sensible to have an agreed period during which in-house dispute resolution attempts are pursued and when exhausted/deemed exhausted ADR can be mandated.

Should ADR become mandatory in the motor vehicles sector, we consider it most appropriate to have a reasonable subscription fee plus a 'per case' fee to cover the costs (but the costs would have to be low in order not to be prohibitive). We believe this mixed subscription and per case model is appropriate as a sole pay-per-use model may dissuade firms from offering out the service to customers, but a reasonable subscription fee is fairer for businesses who infrequently use ADR and thus both are required to encourage more businesses to make use of the service.

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?

A nominal set fee with clear outlines on the potential 'pay-outs' to customers would be more beneficial as firms will be able to budget for potential claims knowing possible amounts. Although, there is a risk that firms will see how much they may have to pay out and could consequently withhold the sharing of ADR services to the customer.

Further detail on what a nominal fee amounts to is required. If payable by the consumer it may act to limit the number of spurious and vexatious claims, but in order to avoid this becoming a barrier to justice, the fee would have to be set at a low level which may ultimately only be used to raise funds. Lowering the limit on the value of claims would likely increase the take-up of ADR, although consideration should also be given to non-monetary claims such as those relating to "membership points". We would also recommend that a suitable period of time must have expired before in-house discussions are considered exhausted – again more detailed consideration needs to be given as to what amounts to "suitable" in these instances and we would submit that a one size fits all approach is inherently inappropriate.

Q71: How can government best encourage businesses to comply with these changes?

The Government can best encourage compliance with these changes by promoting the reputational benefits of ADR participation, as most businesses seek to protect and enhance a positive brand reputation. Where possible, putting a monetary value on the reputational cost of non-participation could be a powerful tool to influence a change in business behaviour. An alternative method could be the introduction of an ADR kitemark that carries consumer recognition, which would incentivise businesses to participate in ADR schemes. However, mandating participation in ADR within the motor vehicles sector would remove the need to incentivise business participation altogether.

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?

We do not consider it necessary to open up additional routes to redress, as there are already many different options available to consumers. What is needed is better signposting of these services. One major deterrent for customers in using ADRs is the amount of time it takes to seek redress. Higher staffing levels would result in shorter timescales and would address this issue. As long as this form of discouragement was removed and should consumers have better awareness or their rights and existing enforcement routes in the form of central guidance (as detailed in the response to Q48), the current framework in place would be sufficient.

About the BVRLA

The BVRLA represents over 970 companies engaged in vehicle rental, leasing and fleet management. Our membership is responsible for a combined fleet of four million cars, vans and trucks – one-in-ten of all vehicles on UK roads.

BVRLA members represent the demand-side of the automotive industry, buying around 50% of new vehicles, including over 80% of those manufactured and sold in the UK. In doing so, they support almost 500,000 jobs, add £7.6bn in tax revenues and contribute £49bn to the UK economy each year.

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Together with our members, the association works with policymakers, public sector agencies, regulators, and other key stakeholders to ensure that road transport delivers environmental, social and economic benefits to everyone. BVRLA members are leading the charge to decarbonise road transport and are set to register 400,000 new battery electric cars and vans per year by 2025.

BVRLA membership provides customers with the reassurance that the company they are dealing with adheres to the highest standards of professionalism and fairness.

The association achieves this by reinforcing industry standards and regulatory compliance via its mandatory Codes of Conduct, inspection regime, government-approved Alternative Dispute Resolution service and an extensive range of learning and development programmes.

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