CBI response to the BEIS consultation: Reforming competition and consumer policy

The CBI speaks on behalf of 190,000 businesses of all sectors, sizes, and regions that together employ around a third of the private sector workforce. With offices across the UK as well as representation in Brussels, Washington, Beijing, and New Delhi the CBI communicates the British business voice around the world.

The CBI welcomes the opportunity to respond to the Department for Business Energy and Industrial Strategy's (BEIS) consultation on *Reforming competition and consumer policy*. In completing this response, the CBI has engaged with members across a wide range of sectors such as financial and legal services, technology, manufacturing, retail, and utilities. The proposals in this document will impact a breadth of sectors in unique ways, and we have endeavoured to captured how the reforms could impact British industry and the economy. We have set out a response to 28 out of the 75 questions stated in the consultation document.

Seizing the moment for smart competition and consumer policy

As the world emerges from the pandemic, the UK is at an inflection point. Brexit, Covid-19, climate change – all demand that the UK forges a new growth story to compete in the world. These changes will not be without competition – for new markets, new skills, and technological advantage. The consultation provides an opportunity to reform the competition regime to adapt to these grand challenges.

Implemented correctly, the UK can win the race to the top by creating a competition regime that promotes and develops the highest of standards – in a way that is proportionate and agile to respond to changing business models and consumer behaviour. The UK has an opportunity, to look across the landscape of regulatory change, to ensure that the proposals adopted from this consultation are pro-growth, pro-investment, and pro-competitiveness.

For instance, the UK is internationally respected for its analytical rigour and market inquiries, and it can continue to be a source of confidence when engaging in international agreements and trading relationships. Speed can be central to the new regime but must not compromise thorough analysis or assessment before market intervention.

Any regulatory changes need to be smart, well-implemented, and keep the UK competitive, internationally. It is crucial for business and government to work together to seize the moment for a smart competition and consumer policy regime.

And the stakes are high. CBI members find that government policy and/or regulatory change can impact decisions to undertake R&D/innovation activity. Reform to the competition regime must have regard to the disincentives that could be created to business investment. The government must consider how the package of reforms will impact the ability of businesses to innovate and foster growth.

The proposals taken forward must also be reviewed in the round and in light of several seismic changes taking shape on tax policy, subsidies, and national security. Taken together, the government's proposals must prioritise smarter regulation and ensure the regulatory burden on business does not increase.

Finally, to achieve a competition regime fit for a post-pandemic world, the CMA must be well resourced and subject to proportionate levels of scrutiny by government or Parliament.

Summary of principles

The UK has a strong foundation in its current competition and consumer policy and the CBI supports reform where it helps maintain or boost the UK's global competitive edge, supports innovation, and protects consumer rights in a proportionate manner. A summary of principles to consider are set out below, followed by more detailed responses to the consultation questions.

Principle 1: Minimise disruption and cost to business

The government must have regard to the impact these proposals will have on the ability of businesses to operate in the UK with certainty and minimal disruption. A competition regime that intervenes in markets regularly will come at a huge financial cost, as businesses constantly adapt to new regulations or enforcements, and could deter future investment. The regime must be both pro-competition and pro-investment to ensure interventions are based on clear evidence and a principle of proportionality.

Principle 2: Regulatory coordination

Several powers, especially with regards to regulations and enforcement powers, are already within the remit of sector regulators. Clear modes of communication as well as coordination will be required where the CMA and regulators are carrying out work in similar fields - to avoid duplication or a burdensome process. It is vital there are clear lines of distinction regarding responsibilities and boundaries on new and existing regulation.

Principle 3: Timetable for change

Several proposals in the document such as subscription contracts, if adopted, could require substantial change to business models or to products and services. A clear timetable for change will be vital. Clear guidance and business engagement regarding what will be in or out of scope of these changes, will be essential to minimising disruption to business.

Principle 4: An effective and well-resourced competition authority

Providing the CMA with greater discretion and swift decision-making powers, across a broad range of issues, will lead to an increased workload. For these changes to inspire confidence in business, the proposals must not compromise analytical rigour and accuracy, for speed. The competition regime in recent months has already been endowed with a wider remit including the Office for Internal Market, Subsidy Advice Unit, and the Digital Markets Unit. To maintain the analytical integrity of the CMA, the government must consider all these changes in the round and ensure the CMA has the resource to remain effective.

Principle 5: Proportionate scrutiny and appeals processes

The proposals give greater discretion to the CMA to carry out investigations, intervene in markets, and enforce consumer law. The rationale is to reduce consumer harm and to have a more agile competition regime. However, with this additional flexibility, there must be clear processes for appeal and avenues to scrutinise decisions, as well as maintaining the right to defence. Accountability is crucial in a system with vast changes, to ensure the system is functioning correctly and delivering on outcomes. These checks and balances will also be crucial to preserve trust in the competition regime.

Principle 6: Ongoing business engagement

The CBI welcomes the business engagement carried out by BEIS over the course of the consultation. However, as these new proposals are developed and implemented, engagement with the business community must continue to ensure the regime is delivering the best outcomes for business and consumers. On areas where there is opportunity to dramatically improve the business experience, such as with the merger regime, continuous dialogue will be vital to ensure these changes are a success. The CBI stands ready to facilitate these conversations and ensure the reformed regime works to its fullest potential.

Section 1: Competition policy

State of Competition in the UK

The CMA's 2020 report on the state of competition in the UK was an extremely useful and thorough document outlining the state of business dynamism across sectors and consumer choice. It is important that the CMA can continue this work and report on its findings regularly.

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?

Metrics based on large tax administration datasets give an extensive view of the activity across the economy but have an extremely long lag-time. Understanding market concentration today should not be based solely on tax data from two years ago. These datasets are also based on industry classification codes that may not reflect the new business models that exist today.

As the pandemic has shown, markets and industries can change rapidly, thus faster indicators should become part of the CMA's measurement toolkit. This could range from collecting or commissioning survey data or using third party sources. It is important that the CMA, in measuring the state of competition, uses a range of tools, especially as we continue to grapple with the fallout of the pandemic.

Q3. Should government provide more detailed and regular strategic steers to the CMA?

The independence of regulators and institutions is a hallmark of the UK's high regulatory standards. Across industries, it gives investors confidence in the stability of their investments and reassurance that regulation will withstand the parliamentary cycle. The government already provides the CMA with a strategic steer once a Parliament, which sets out the priorities of the day. More regular steers could compromise the independence of the CMA and blur the lines between government policy and the competition regime. Proposals for the CMA to set out its actions from its findings in the State of Competition report is welcome but does not require intervention from government. Strategic steers require a balancing act to ensure the CMA maintains its independence from government and is not impacted by disruptions caused by changes in government or short-term policy priorities.

Market inquiries

Market inquiries can be lengthy, taking several months or years to complete and can cause uncertainty for the firms involved. Thus, the government's ambitions to create a more efficient process is welcome. However, businesses respect the analytical rigour of the current market inquiries process. Some of the proposed changes to the current system risk jeopardising the elements that often give confidence to the market being studied or investigated.

Q4. Should the CMA be empowered to impose certain remedies at the end of a market study process?

The CMA should not be empowered to impose certain remedies at the end of a market study. Given the nature of the study is restricted to examining the market itself and avenues for intervention, the CMA will not have carried out all the necessary analysis required to determine the level of intervention, if any. A remedy at this stage of a broader inquiry could be premature and lead to inaccurate determinations. If the study does not lead to an investigation, it would mean the CMA intervened without finding any adverse impact on competition during the market study phase. There are existing provisions for the CMA in the Competition Act to intervene if it is found there is severe consumer harm taking place in the market.

Q5. Alternatively, should the existing market study and market investigation system be replaced with a new single stage market inquiry tool?

We do not support the proposal to merge the existing market study and investigation systems into a single stage market inquiry. As stated above, businesses appreciate the analytical rigour of the current process and

retains an option for the CMA to take no further action after a market study. Businesses derive benefit from market studies even when they are don't proceed to an investigation. By merging the two processes together, every market inquiry will begin in a reactive way and with the presumption of market intervention.

Some businesses are also concerned that a single stage tool could increase the reservations of investigated businesses. In a linear process business may not be as comfortable if they expect the inquiry to lead to an investigation, diminishing the opportunity for dialogue or to retain confidence in the CMA's due process.

Giving the CMA the flexibility to set out the focus of the investigation would help to speed up the market investigation process. Focussing only on the areas identified to be of concern, will relieve the pressure of the CMA starting its analysis again.

Q6. Should government enable the CMA to impose interim measures from the beginning of a market inquiry?

The nature of a market inquiry is to assess the market landscape and evaluate where failures or market interventions may be necessary. By empowering the CMA to impose interim measures from the beginning of an inquiry – where the CMA are simply scoping out the market or any potential problems in the market– could increase the risk of inaccurate or premature interventions. Again, incorrect or inaccurate measures are costly to business and increase uncertainty to those in the market. Where those businesses are particularly small or young, interim measures could cause a premature exit from the market altogether.

The market inquiry process should provide as much certainty for those operating in the market as possible. Interim measures or remedies when the inquiry is still underway prevent businesses from trading effectively and create added distortions to the market. There must be a clear evidence base and cause for concern before any intervention is proposed and/or imposed.

Q7. Should government enable the CMA to accept binding commitments at any stage in the market inquiry process?

The CMA should accept binding commitments at any stage of the market inquiry process, so long as the commitments are voluntary and entered into by parties will full knowledge of the CMA's concerns and evidence base.

Q8. Will government's proposed reforms help deliver effective and versatile remedies for the CMA's market inquiry powers?

Imposing a temporary remedy that has the potential to be removed or reversed during the investigation process would cause disruption to business and would be extremely costly. Implementation trials will also cause uncertainty for businesses, who will be unsure of the operating environment even after the remedy is implemented or the investigation concluded. A cooling off period goes some way to maintain certainty, but this still leaves room for further CMA action. A review may be appropriate to ensure any interventions were effective but should not enable further action.

Regulatory change is both costly when imposed and removed. Business requires certainty and a clear evidence base for any remedies being imposed on a market. Ongoing CMA intervention or review could also dampen consumer confidence in these markets or businesses. Given the rigorous evidence base that is required to impose a remedy, the CMA must similarly maintain a high standard when removing or amending a remedy.

Mergers

The UK is increasingly one of the most difficult countries in the world to carry out M&A activity. Businesses working across jurisdictions emphasise the UK is an outlier to international counterparts such as the EU and US in its approach to mergers. This consultation is an opportunity to fix several systemic challenges with the current merger regime to both maintain the UK's competitiveness as well as ensure it has a regime fit for the

21st century. The government must ensure that increased powers for the CMA do not, instead, result in a more difficult process for business.

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?

While the full implications of these proposals will depend on their implementation, the CBI welcomes the government's efforts to improve the current jurisdictional tests. We support an increase to the safe harbour turnover threshold but are concerned that £10 million remains extremely low.

Proposals to update the current share of supply test are also welcome and the final threshold must complement the turnover test. The share of supply test, in particular, has been an issue for business for several years. However, we remain concerned that the proposed rate of 25% could remain too low and encourage the government to explore the appropriate rate further. It's also vital to ensure there is a clear nexus between the two parties, in the scenario where the share of supply for one supplier is 25% – there needs to be overlap with another party.

Q12. What reforms are required to the CMA's merger investigation procedures to deliver more effective and efficient merger investigations?

With regards to proposals in the digital markets consultation, we would encourage the government to allow the overarching changes to competition policy to be introduced in the first instance to test the necessity of a separate merger regime. The purpose of the reforms in both consultations is identified as wanting to better address 'killer acquisitions', however it is unclear why two regimes would be needed to meet the same objective. Alignment across the two regimes will ensure businesses have confidence in the CMA's merger process as well as ensure consistency.

Attracting investment is central to efforts to build a truly global Britain and shape a competitive, dynamic, modern economy. While the UK sees significant investment from the tech sector, we can't rest on our laurels. Some firms are concerned that a separate merger regime for Strategic Market Status (SMS) companies could create an unlevel playing field that undermines FDI and VC investment. Government should also consider how it impacts start-ups, many of whom depend on acquisitions.

The consultation could also address some longstanding issues. Business identifies the pre-notification phase, although voluntary, can be extremely resource intensive and challenging. The digital competition regime would require mandatory pre-notification thereby creating a large differential at the outset of the merger process. Business continues to be concerned that this could create an unlevel playing field. Where possible, there must be complete alignment across the two regimes.

In addition, the government must continue to engage business to address the resource intensive nature of the pre-notification period, and extensive document requests. Some businesses identify that technological advance – such as sharing electronic files rather than hard drives – could help to alleviate the intensity. However, the majority of these challenges are more persistent. Similarly, businesses highlight the current imbalance between Phase 1 and Phase 2, means that work is duplicated and welcome additional flexibility in the Phase 2 process that has been proposed.

Given the complexity of the issues at hand and the impact the proposals could have on long term investment into the UK, the government must actively engage with business throughout the legislative and implementation period. Continuous dialogue and communication will ensure the merger regime is fit for the post-pandemic economy and encourages business investment.

The CMA Panel

The CMA Panel performs an important role in the current regime. Businesses respect the oversight it provides and its independence from the inquiry process.

Q13. Should the CMA Panel be retained, but reformed as proposed above? Are there other reforms which should be made to the panel process?

Business value the independent scrutiny provided by the Panel. As the nature of the cases and investigations carried out by the CMA will become more complex, there is ever more reason for the Panel to main oversight as an independent voice to CMA judgements. The business insight that Panel members can bring will ensure that analytical assessment is coupled with a nuanced understanding of market and industry.

Having a smaller Panel who are able to work on cases on a full-time basis could increase the efficiency of the CMA's work, as well as enable the Panel to dedicate more time to review. However, to ensure the Panel is diverse, it must ensure the role offers flexibility and is inclusive of working patterns or accessibility needs. A dedicated Panel could risk reducing the sectoral mix of the current Panel and attract only those with expertise in competition law rather than business.

The proposals also give additional discretion to the CMA. Therefore, maintaining a high level of scrutiny and the ability to challenge will be critical in ensuring the success of these measures. For market inquiries, the Panel must be appointed from the beginning, so they are aware of the CMA's full process and evidence base.

Penalties for non-compliance

Penalties for non-compliance are understandable but there is a concern that if these are applied too aggressively and retrospectively then this could be problematic. Adapting to new remedies or investigations can cause disruption to business, and often require additional resource to comply with. Business is concerned that a more punitive approach would jeopardise the proportionality currently within the regime and create uncertainty for future business activity.

Section 2: Consumer Rights

Subscription contracts

The reforms proposed in subscription contracts are extensive. The government must be proportionate in the proposals it takes forward and consider the regulatory burden these reforms could put on businesses.

However, this is not to say that all interventions to correct for malpractice in subscription contracts are harmful to business. For instance, industry have benefited from interventions such as changes to hidden fees in the car rental market, which followed a CMA probe. However, if designed incorrectly these proposals could disrupt entire business models as we increasingly become a subscription-based economy.

Q30. Do you agree with the description of a subscription contract set out in Figure 8 of this consultation? How could this description be improved?

Some members would like clarity on the exemption of free subscriptions. Increasingly many businesses offer a free subscription and several paid-for tariffs, the description must have clarity about the interaction of the two systems.

Q31. How would the proposals of clarifying the pre-contract information requirements for subscription contracts impact traders?

We support the proposals to clarify key information of the subscription at the pre-contract stage. However, the design and definition of 'key information' must be discussed with business to ensure only vital information is included within this. Some businesses already have these processes in place, to ensure information is clear and digestible for consumers. The government must ensure it learns from business on best practise and understands where pre-contract information has limitations or will disrupt current products or services.

Q33. How would expressly requiring consumers to be given, in all circumstances, the choice upfront to take a subscription contract without autorenewal or rollover impact traders?

It is likely that an upfront choice given to consumers in all circumstances would be too blunt an instrument for businesses. Given the diversity of industries impacted by these proposals and that the risk of harm from subscriptions will vary, upfront choices would limit a business' ability to attract customers. Some businesses offer free trials or subscriptions at reduced fees to enable customers to decide whether they would like to continue using the product, an upfront choice would have a negative impact on these businesses. Such a change could also negatively impact consumer choice, as such schemes (free trials and discounts) may stop being offered by businesses altogether. Instead, consumers should be notified about changes to their subscription, and have the choice to auto-renew or rollover the contract.

In general, consumers should have the responsibility to end subscriptions to which they have signed up. However, businesses should not have practises that make cancelling subscriptions harder than the process of signing up to them. For instance, if a customer can register for a subscription online, ending the subscription should also be possible online, rather than requiring a phone call or email. A criterion on the 'fewest number of clicks' may be too prescriptive, however cancelling a subscription should be simple and accessible for all consumers.

Again, the government must ensure regulatory coordination and where sector regulators have already implemented changes or how these proposals will be enforced.

The timetable for change for such a substantial change must be clear. Businesses develop products months/years in advance, changes to subscription contracts must come with further business engagement and clear timelines so that businesses can adjust accordingly.

Q36. Should traders be required, a reasonable period before the end of a free trial or low-cost introductory offer to (a) provide consumers with a reminder that a "full or higher price" ongoing contract is about to begin or (b) obtain the consumer's explicit consent to continuing the subscription after the free trial or low cost introductory offer period ends?

Pre-contract information requirements are the best means to ensure that consumers are properly informed when they enter a subscription contract. Customers should be aware at the outset of the contract. However, as stated in Q33, where there are changes to the subscription, such as higher fees or new charges it would be reasonable to provide consumers with a reminder notification and is a service already offered by several businesses. Without action from the consumer, the contract is assumed to continue and automatically renew. Industry engagement will be vital to ensure a proportionate timeframe is determined for such a reminder and can be practically implicated across businesses. The government must be cognisant of the practical limitations that many businesses could face in implementing a complex, prescriptive system.

Option (b) would not be reasonable and amounts to a "double opt-in" where the consumer is required to agree to the contract both at the initial sign-up stage and at the end of an introductory period. This could damage the consumer experience and may incentivise firms to remove the offer of free or low-cost introductory periods. It also seems unnecessary, where consumers have been given the required pre-contractual information and agreed to start a subscription contract to request explicit consent once more.

Q37. What would be the impact of proposals regarding long-term inactive subscriptions have on traders' business models?

Determining long-term inactive subscriptions would have large distortions on markets and business models. Such a policy would be difficult for businesses to implement as subscriptions can vary from industry and business size. There is no one-size-fits all measure for what constitutes a 'long-term inactive' account. Some traders have already set up processes to cancel streaming services if inactive, but this would not be possible for several traders including vital utilities, where networks are developed from subscriptions, or a purchasing history could be lost. Rather than preventing consumer harm, these proposals could add to the administrative burden on business and complicate the system of subscriptions even further.

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)?

It is not always the case that entering a subscription contract is easier than cancelling the contract. However, we acknowledge this can be the experience of some customers. Businesses should not have practises that make cancelling subscriptions harder than the process of signing up to them. For instance, if a customer can register for a subscription online, ending the subscription should also be possible online, rather than requiring a phone call. The process of signing up and cancelling subscriptions can vary by business, given their relative size or industry.

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?

Exiting subscription contracts must be an easy process, and we understand the rationale for this proposal. However, we believe that this may not be the most appropriate system.

While in principle we agree that exiting a subscription should be easy to find, it must be clear what the definition of 'easy' is to businesses and how this would work across sectors. Proposals to ensure avenues to cancel a subscription are well sign-posted and as easy as signing-up are important, though a more complex system with greater regulations can create challenges to business models and traders.

Q41. Are there certain contract types or types of goods, services, or digital content that should be exempt from the rules proposed and why?

There must be some exemptions for utilities providers and other essential services. For instance, on long-term inactive subscriptions, for customers in utilities and other such 'silent services', an inactive account often means the consumer is happy with their service. However, consumers in these industries are notified of price changes to their bills or contracts, thus firms are already complying with some proposed changes.

Fake reviews

As the consultation document highlights, online reviews are a useful tool for consumers and businesses alike. Reviews can be particularly important to new entrants establishing themselves in a market with new products or services. They can help consumers make choices to maximise their utility and can provide businesses with useful insights into the preferences of their target market. Businesses benefit from customer reviews but want trustworthy and reliable feedback. Work is already underway by the CMA to assess the proliferation of fake reviews.

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?

As recognised in the consultation, commissioning reviews may be legitimate and assist both consumers and businesses to make genuine user reviews available. While there are some bad actors, who can commission fake reviews, this is not the general practise of business. Therefore, we do not agree that simply commissioning consumer reviews in all circumstances should be deemed an automatically unfair practice in Schedule 1 of the CPRs. We are concerned about how such a policy would be enforced and where limitations would be drawn when determining the classification of a commissioned review.

However, commissioning or incentivising a person (or customer) to write and/or submit fake consumer reviews should be an automatically unfair practice in Schedule 1 of the CPRs.

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?

The proposals set out in Q42 (a) could have adverse impacts on businesses of all sizes, online and offline as well as consumers.

The proposals in Q42 (b) and (c) could benefit businesses who are subject to fake reviews, where these deter customers or reduce sales, however, could increase the administrative burden on businesses that are responsible for validating reviews.

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?

Yes, offering or advertising to submit, commission or facilitate fake reviews should be deemed an unfair practise.

Section 3: Consumer law enforcement

Q55. Do you agree with government's proposal to empower the CMA to enforce consumer protection law directly rather than through the civil courts?

The current proposals have the potential to increase the timeliness of decisions and deliver better outcomes for consumers. It could also reduce costs on business through less litigious processes. However, there remain risks that a business' right to defence are not preserved if the CMA itself enforces consumer protection law rather than the civil courts. As a result, the new regime must be proportionate in its implementation and use of these powers. It must ensure it strikes the correct balance between timeliness and ensuring that accurate and evidence-based decisions are enforced.

Sectoral regulators or ombudsmen, where they already exist, must continue with the responsibility to enforce consumer protection in these industries. The CMA must work with these regulators to understand their remits and how it can work effectively alongside existing consumer protection laws.

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?

It is unclear that more punitive fines would incentivise compliance. We are concerned that the information requests, if made a criminal offence or liable to fines, would disproportionately penalise those without the resource/expertise to handle information requests and the threat of a fine could exacerbate challenges faced by such businesses. CMA information requests are often very broad and both time and labour intensive for businesses. There are often valid reasons business are unable to provide the information sought by the CMA, for instance, these requests sometimes request information that is not known by the business or held within the firm. Members have raised concerns of the short timelines imposed by the CMA regarding information requests and the impact they have on their organisation, including reputational damage and distress.

The CMA currently has sufficient information gathering powers and tools to address non-compliance; the proposed reforms would not 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?

No, there should not be a formal process what includes an admission of liability while agreeing to undertakings. Such a process might create apprehensions for the process of agreeing undertakings and reduce the avenues for change.

Alternative Dispute Resolution

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?

The government must work with businesses to understand where a reduction from eight weeks to four weeks in dealing with complaints may not be possible. The consultation states the majority of complaints are dealt with in four weeks, however businesses worry that the subset of more complex complaints will now be in scope of non-compliance as a consequence.

Encouraging business compliance

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

The government must have clear lines of communication with businesses and fora to discuss potential challenges with these proposed changes. Clear guidance will be crucial to ensuring businesses of all sizes and in all regions have the information and bandwidth to comply with the new legislation.

The timeline for change must be proportionate and have regard to the potential disruption that will be caused by proposals taken forward. The government must also ensure duplication across proposals is mitigated, and that sectoral regulators are consulted to understand regulatory change across industries that may impact a business' ability to adjust to new regulation.

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?

It is not necessary for the government to open further routes to collective consumer redress in the UK to resolve consumer disputes. The CMA has powers under the Enterprise Act to act on behalf of consumers and has demonstrated this during the pandemic. Consumer rights groups are also endowed with powers to act on behalf of consumer through various means, including super complaints.

As the consultation notes, implementing an administrative model for enforcement of consumer protection law will make it quicker and easier for the CMA to obtain collective compensation for consumers through the imposition of enhanced consumer measures. Those reforms are likely to address the government's concerns thus would not be appropriate, at this stage, to also expand routes for collective consumer redress to private organisations and consumer organisations.

An earlier consultation by DCMS has already explored the appropriateness of class actions mechanisms regarding data protection and the government did not take the proposal forward. More broadly the CBI advises against a US-style class action 'opt-out' process which is extremely costly, litigious, and is likely to lead to worse outcomes for consumers.

The government should wait to see how the new administrative regime functions and the CMA's effectiveness of securing compensation through the use of the proposed administrative powers, before deciding whether to expand routes to collective consumer redress.

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?

The proposed changes to consumer law enforcement are substantial. Compliance and keeping pace with regulatory change are often a factor of business size and industry. Many businesses without a dedicated customer services or compliance team can be adversely impacted by vast changes to regulations, which can make compliance ever more difficult. Businesses with established compliance teams also lose time and resource adjusting to regulatory change or understanding new guidance. Consistency in approach and a clear timetable for change is critical for all businesses.

Lastly, the pandemic has also added strains to several sectors such as hospitality and aviation, which could have set back much business as usual and compliance work. Changes to guidance must be communicated clearly in these industries but the government must also be aware of the unique challenges facing such industries. It may be advisable for additional resource be spent in industries that may still be in distress or emerging from the pandemic.