UK Government Consultation - Reforming Competition and Consumer Policy - Airbnb Response

A. Introduction

1. Airbnb welcomes the opportunity to respond to the UK Government's consultation on its proposal for changes to competition and consumer policy (the 'Consultation').[1] We support the introduction of new rules that are designed to build on the UK's "*high levels of consumer protection now that it has left the EU and to deliver the manifesto commitment to tackle rip offs and bad business practices*".[2] We agree that the UK's 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*".[3]

2. As an online business, we are particularly interested in the proposed changes in respect of consumer rights. We note that the Consultation highlights the increase in online transactions, particularly in those mediated by online platforms, which has been compounded by COVID-19.

3. Airbnb is committed to high levels of customer care and satisfaction. We therefore take compliance with consumer protection legislation seriously and are committed to respecting UK consumer rights. We believe that the Government's goal in protecting consumers and ensuring they feel confident and supported in using online platforms is hugely important. We are, consequently, supportive overall of the Government's proposed policies in respect of consumer rights and consumer law enforcement.

4. We note that the Government states that its proposed policies are designed to limit harm to consumers across the areas of subscription contracts, the commissioning of fake or misleading reviews, and the exploitation of behavioural biases, but that these aims should be achieved in a manner that maintains the flexibility needed for businesses to be able to grow and innovate.[4] To that end, in order for the Government to achieve its stated objectives, a key issue it should bear in mind whilst finalising its policies following the Consultation, is that it avoids creating unintended consequences.

5. As such it is important that any updates to the UK's consumer rights and consumer law enforcement framework take into account the changes to the consumer protection landscape introduced by the rise of online platforms, for example, by ensuring that clear distinctions are made between the roles of traders and those of online platforms or marketplaces used by business users to reach end users. In particular, a clear distinction should be made between the consumer protection obligations placed on traders which directly offer their services to consumers, and those placed on the online platforms through which traders and consumers deal, given that online platforms provide access to the platform but do not themselves provide the underlying service to consumers.

6. We are pleased to assist the Government in achieving its objectives within the area of consumer protection, and have responded below to those Consultation questions which are of most relevance to

[1] For the avoidance of doubt, this response is made by Airbnb Ireland UC representing Airbnb's views.
[2] Reforming Competition and Consumer Policy (publishing.service.gov.uk), paragraph 2.7 ('Consultation').
[3] Consultation, paragraph 2.6.
[4] Consultation, paragraph 2.6.

our business, namely, those questions raised in Chapter 2 of the Consultation.

7. We remain available to speak with the Government about any of the points made in our response, should they find this would be helpful.

B. Airbnb's response to the Consultation

Fake reviews

8. Overall, we agree with the Government's prioritisation of tackling the fake review industry.

9. However, we do have some concerns in relation to the Government's proposals to amend the CPRs to add the following to the list of unfair practices set out in Schedule 1: "*Hosting consumer reviews of a good or service without taking reasonable and proportionate steps to ensure that they originate from consumers who have actually <u>used or purchased</u> that good or service*".[5] If implemented as-is, we understand that the Government's proposal would render carrying out these practices automatically unfair in all circumstances.[6]

Q45: response

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?*

10. We ask the Government to continue to consult with a range of industry actors as it develops this policy to ensure the final position addresses potential and legitimate divergences in industry-specific cases.

11. The terms "*use*" and "*purchase*" should be defined to cover situations where a booking has started but was not completed, including those cases where a consumer may have purchased services, but was then refunded their payment despite receiving some part of the services. In particular, there are cases where a traveller cancels their accommodation due to an issue caused by the accommodation provider or due to issues with the property discovered at or just before check-in. In such cases, while the traveller has not stayed overnight in ("*used*") and may not have ultimately paid for ("*purchased*") the accommodation, we believe that allowing such travellers to leave reviews is valuable for our community because it allows travellers to share issues with a particular property or accommodation provider, which could be useful information for other consumers.

12. Conversely, travellers sometimes cancel their stay for reasons completely unrelated to either the service provider or the accommodation, such as that their travel plans have changed, or they simply forgot they had made a booking. In such cases, the traveller may have cancelled their booking too late before their scheduled check-in time to be entitled to receive a full refund, meaning that they do not "*use*" the accommodation, but nevertheless do in fact "*purchase*" at least some of the services.

13. Under the proposed amendment to Schedule 1, and depending on the particular facts of the case and the Host's cancellation and refund policy, such a customer may have seemingly "*purchased*" the accommodation. This means that a platform could be required to enable such travellers to publish

[5] Consultation, paragraph 2.41. Emphasis added.
[6] Consultation, paragraph 2.42.

their review, regardless of whether they are able or likely to provide information relevant to other consumers when making a decision about whether or not to purchase that same service in future. We believe this would harm accommodation providers and is unfair; unfair reviews, such as those left by travellers who cancelled their stay for reasons unrelated to their services or accommodation, are one of the top complaints we receive from Hosts on Airbnb.

14. Further, we believe that reviews provided by this category of travellers are not useful to our community because the traveller's limited experience of the service provider and accommodation would not enable them to leave a meaningful review. In some unfortunate cases, travellers will even vent their frustration from their personal cancellation circumstances in reviews, which unfairly burdens the accommodation provider with a negative review they had no means to control. It is therefore questionable if such reviews should be seen as "*genuine*". As the Consultation already acknowledges, disparaging fake reviews may have a disproportionate impact on individual accommodation providers and small businesses, many of which use our platform.[7] In this regard, please note that more than half of Hosts (accommodation providers) on Airbnb say the additional income they earn from occasionally sharing their space helps them afford their home, and therefore the impact of certain types of review may have serious financial consequences for individual Hosts or Hosts operating small businesses.[8]

15. In principle we agree with the sentiment that it is sensible to ensure that consumer reviews of a service originate from consumers who have "*used or purchased*" that service, however the ambiguity in these terms leaves this position open to the unintended consequences highlighted above. To address this, we would propose an exception should be included in the rule, granting discretion to companies in defining policies that are best able to ensure that reviews are relevant, trustworthy, and provided by consumers who have actually experienced the service being provided by the service provider, no matter how short that experience is. We also urge the Government to clarify that in certain situations, such as where a traveller has not even attempted to check in or stay in the accommodation (for example, they cancelled due to a change of plans), it may be legitimate for a company to prevent those travellers from leaving a review.

Sanctions and penalties

16. Overall, we agree with the Government's proposal to tackle non-compliance with information gathering powers.

17. However, we are seeking further clarity in relation to the Government's proposals to introduce civil penalties, as some of the key terms used in the Consultation, such as "*fails to comply*", and "*reasonable excuse*" do not appear to have been defined.

Q61: response

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?*

[7] Consultation, paragraph 2.34.
[8] Airbnb, Survey Sent to Airbnb Host and Guest Accounts Around the World (San Francisco: Airbnb), 2019.

18. The Government proposes to introduce civil penalties where a firm fails to comply with information gathering powers, with fines based on the trader's turnover.

19. It would be helpful if the Government could clearly define the term "*fails to comply*" and explain what this would mean in practice. Likewise, clarity around what constitutes a "*reasonable excuse*" (as mentioned in paragraph 3.45 of the Consultation) and how that would be assessed would be helpful. Inevitably, there will be cases where a firm is unable to provide all information requested, not because it does not wish to, but because it simply does not hold the information it is being requested to produce, for example because it does not capture specific types of data. In such cases, we would like to understand whether the Government would propose a fine be issued in such a case, and what discretion, if any, could be exercised.

Airbnb Ireland UC

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