Response ID ANON-N31T-5NZ9-V

Submitted to Reforming Competition and Consumer Policy
Submitted on 2021-07-20 16:53:13

About you

What is your name?

Name:
[redacted]

What is your email address?

Email:

What is your organisation?

Organisation:

Are you happy for your response to be published?

Yes, but without identifying information

Would you like to be contacted when the consultation response is published?

Not Answered

Competition

1 What are the metrics and indicators the CMA and government could use to better understand and monitor the state of competition in the UK?

Please respond here.:

2 Should the CMA have a power to obtain evidence specifically for the purpose of advising government on the state of competition in the UK?

Yes

Please expand on your answer here.:

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

No

Please expand on your answer here.:

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

Yes

Please expand on your answer here.:

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

No

Please expand on your answer here.:

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

Yes

Please expand on your answer here.:

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

Yes

Please expand on your answer here.:

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

Yes

Please expand on your answer here.:

9 What other reforms would help deliver more efficient, flexible, and proportionate market inquiries?

Please respond here.:

10 Should the current jurisdictional tests for the CMA's merger control investigations be revised? If so, what are your views on the proposed changesto the jurisdictional tests?

Maybe

Please expand on your answer here.:

11 Are there additional or alternative reforms to the current jurisdictional tests for the CMA's merger control investigations that government should be considering?

Maybe

Please expand on your answer here.:

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

Please respond here.:

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

Not Answered

Please expand on your answer here.:

14 Should the jurisdictional requirements of the Chapter I and Chapter IIprohibitions 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?

Yes

Please expand on your answer here.:

15 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?

Yes

Please expand on your answer here.:

16 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?

Yes

Please expand on your answer here.:

(b) only to agreements to which all the business that are a party have an annual turnover of less than £10 million

17 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?

Yes

Please expand on your answer here.:

18 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?

Not Answered

Please expand on your answer here.:

19 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?

Not Answered

Please expand on your answer here.:

20 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?

Not Answered

Please expand on your answer here.:

21 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?

No

Please expand on your answer here.:

22 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?

Not Answered

Please expand on your answer here.:

23 Should government remove the requirements in the CMA Rules on the decision makers for infringement decisions in Competition Act investigations?

Not Answered

Please expand on your answer here.:

24 What is the appropriate level of judicial scrutiny for decisions by the CMA in Competition Act investigations?

Please respond here.:

25 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?

Please respond here.:

26 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?

Not Answered

Please expand on your answer here.:

27 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?

Yes

Please expand on your answer here.:

28 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?

Not Answered

Please expand on your answer here.:

29 What conditions should apply to the CMA's use of investigative assistance powers to obtain information on behalf of overseas authorities?

Please respond here.:

Consumer Rights

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

Not Answered

Please expand on your answer here.:

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

Please respond here.:

32 Would it make it easier or harder for traders to comply with the pre-contract requirements? And why?

Not Answered

Please expand on your answer here.:

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

Please respond here.:

34 Should the reminder requirement apply where (a) the contract will auto-renew or roll-over, at the end of the minimum commitment period, onto a new fixed term only, or (b) the contract will auto-renew or roll-over at the end of the minimum commitment period?

Yes

Please expand on your answer here.:

(b)

35 How would the reminder requirement impact traders?

Please respond here.:

36 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?

Yes

Please expand on your answer here.:

(b) obtain the consumer’s explicit consent to continuing the subscription after the free trial or low cost introductory offer period ends?

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This practice of enticing consumers with free trials is a 'dark pattern' to trick consumers into forgetting they are on a trial.

37 What would be the impact of proposals regarding long-term inactive subscriptions have on traders’ business models?

Please respond here.:

38 What do you consider would be a reasonable timeframe of inactivity to give notice of suspension?

Please respond here.:

39 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)?

Yes

Please expand on your answer here.:

Unfortunately yes. I think it should be just as easy to cancel a subscription contract as it is to enter it.

40 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?

Yes

Please expand on your answer here.:

The details of the process should be able to be amended by the secretary of state via secondary legislation. This will allow the legislation to keep pace with any emerging dark patterns in how traders try to frustrate the process of exiting a subscription contract.

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

No

Please expand on your answer here.:

42 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?

Yes

Please expand on your answer here.:

(a) commissioning consumer reviews in all circumstances.

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Businesses should never be allowed to incentivise or commission reviews, including from paying customers. Customers should only leave reviews of their own free will.

43 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?

Please respond here.:

44 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?

Please respond here.:

45 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

Please expand on your answer here.:

46 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?

No

Please expand on your answer here.:

This is a concern that should be addressed

47 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?

Yes

Please expand on your answer here.:

Despite being against CPR, I often see businesses tacking on "service fees" just before completing checkout. It should be clear before I even add an item to my basket that fees will be added.

48 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?

Not Answered

Please expand on your answer here.:

49 Are there perverse incentives or unintended consequences from our existing consumer law?

Not Answered

Please expand on your answer here.:

50 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?

Not Answered

Please expand on your answer here.:

51 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?

Not Answered

Please expand on your answer here.:

52 What other sectors might new powers regarding prepayment protections be usefully applied to?

Please respond here.:

53 How common is the practice of using terms and conditions to delay the formation of a sales contract?

Please respond here.:

54 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?

Not Answered

Please expand on your answer here.:

Consumer Law Enforcement

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

Yes

Please expand on your answer here.:

56 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?

Please respond here.:

57 What processes and procedures should the CMA follow in its administrative decision-making to ensure fair and proportionate administrative decisions?

Please respond here.:

58 What scope and powers of judicial scrutiny should apply in relation to decisions by the CMA in consumer enforcement investigations under an administrative model?

Please respond here.:

59 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?

Not Answered

Please expand on your answer here.:

60 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?

Not Answered

Please expand on your answer here.:

61 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?

Yes

Please expand on your answer here.:

62 What enforcement powers (or combination of powers) should be available where there is a breach of a consumer protection undertaking to best incentivise compliance?

Please respond here.:

63 Should there be a formal process for agreeing undertakings that include an admission of liability by the trader for consumer protection enforcement?

Not Answered

Please expand on your answer here.:

64 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?

Please respond here.:

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

Please respond here.:

66 How can regulators and government balance the need to ensure timely redress for the consumer whilst allowing businesses the time to investigate complex complaints?

Please respond here.:

67 What changes could be made to the role of the 'Competent Authority' to improve overall ADR standards and provide sufficient oversight of ADR bodies?

Please respond here.:

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

Please respond here.:

69 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?

Yes

Please expand on your answer here.:

Yes. If a business has to pay for ADR per case, they are more likely to address disputes as easy as possible.

70 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?

Please respond here.:

Consumers themselves should never have to pay fees to use ADR. There should be no barriers to entry - if a consumer has been wronged, they shouldn't have to pay to fix it. Even if they get their fee back if they 'win' the case.

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

Please respond here.:

72 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?

Please respond here.:

73 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?

Please respond here.:

74 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?

Please respond here.:

75 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?

Not Answered

Please expand on your answer here.: