

Digital Markets, Competition and Consumers Bill IA

Lead department	Department for Business and Trade
Summary of proposal	The Government propose a package of competition and consumer rights reforms to create a best-in-class competition law system fit for the digital age and to ensure consumer rights, and the civil mechanisms for their enforcement on behalf of consumers, keep pace with the speed of digital innovation.
Submission type	Impact assessment (IA) – February 2023
Legislation type	Primary legislation
Implementation date	2023/2024
Policy stage	Final
RPC reference	RPC-BEIS-5224(2)
Opinion type	Formal
Date of issue	10 May 2023

RPC opinion

Rating¹	RPC opinion
Not fit for purpose	<p>The IA generally adheres to RPC guidance by adequately considering the full impacts of most measures the Bill would introduce, including the impacts on small and micro businesses (SMBs) and across competition policy reforms and most of the updates to consumer rights. The Department has also made considerable efforts to address concerns for most policy areas highlighted by the RPC in an initial review notice (IRN).</p> <p>However, the assessment of the subscription traps reforms IA, specifically that for the cooling-off requirements and the interaction between it and the other policy options to be introduced, remains insufficiently analysed. As a result, the RPC is unable to fully validate the EANDCB figure and, therefore, to certify that the IA is completely fit for purpose.</p>

¹ The RPC opinion rating is based only on the robustness of the EANDCB and quality of the SaMBA, as set out in the [Better Regulation Framework](#). RPC ratings are fit for purpose or not fit for purpose.

Business impact target assessment

	Department assessment	RPC validated
Classification	Qualifying regulatory provision ²	Qualifying regulatory provision
Equivalent annual net direct cost to business (EANDCB)	£172.3 million (initial IA estimate) £179.7 million ³ (final IA estimate)	Not validated
Business impact target (BIT) score	£898.5 million	
Business net present value	-£4,841.9 million	
Overall net present value	£4,847.6 million	

² The majority of the measures to be introduced through the Bill are classified as qualifying regulatory provisions with the exception of the proposal for a pro-competition regime for digital markets, which has been classified as a non-qualifying regulatory provision under the pro-competition exclusion.

³ The individual EANDCB values being put forth for validation from the respective annexed IAs are: subscription traps reforms £171.3 million; Merger reforms £3.0 million; and wider reforms £5.3 million.

RPC summary

Category	Quality ⁴	RPC comments
EANDCB	Red	The Department has identified a good range of impacts and provided an adequate level of evidence to support most assumptions and analysis. However, the assessment of the impacts of the cooling-off requirements in the ' <i>Subscription traps reforms</i> ' IA, are not sufficiently supported by evidence. In particular, there is a risk that the IA has overestimated the impact of the policy package intervention on reducing the number of unwanted subscriptions. The RPC is, therefore, unable to validate the EANDCB figure.
Small and micro business assessment (SaMBA)	Green	The Department has provided an assessment of the impact on SMBs that would be affected by most of the measures proposed in the Bill, providing an adequate consideration of why such businesses cannot be exempt. Additionally, while the IAs acknowledge the potential disproportionate impacts on SMBs from some measures, providing consideration of what mitigating actions could be taken to support them, they could provide more detail why more of these will not be implemented.
Rationale and options	Satisfactory	Across the various measures, the Department does well to identify a number of market failures to support the rationale for intervention. However, while the Department has included some evidence to support most, the evidence included in the <i>Subscription traps reforms</i> IA does not support fully the case for intervention that the Government propose. The IAs discuss the current regulatory interventions and, where possible, consider non-regulatory alternative options.
Cost-benefit analysis	Satisfactory	The Department has used a broad range of evidence, including consultation, business surveys and engaging directly with bodies such as the Competition and Markets Authority (CMA), to inform development of the various measures. However, it is not clear how representative, or suitable, is the evidence used to support the assessment of the cooling-off requirements within the <i>Subscription traps reforms</i> IA.
Wider impacts	Good	The IA considers a range of wider impacts, including those on competition, innovation, trade, and consumers. The IA would benefit from considering in more detail the investment impacts

⁴ The RPC quality ratings are used to indicate the quality and robustness of the evidence used to support different analytical areas. Please find the definitions of the RPC quality ratings [here](#).

(inward investment in particular) on firms affected by the proposals.

Monitoring and
evaluation plan

Satisfactory

The Department discusses monitoring and evaluation (M&E) plans for individual measures within the Bill, for which it is felt appropriate to conduct an evaluation. While the *Subscription traps reforms* IA does well to set out a clear intent for the evaluation of that policy (including identifying metrics and data to be collected), other M&E plans do not identify relevant measures in such detail. The IA would be improved through inclusion of an overarching M&E plan, as well as through strengthening the individual plans in line with the approach taken for *Subscription traps reforms*.

Response to initial review

As originally submitted, the IA was not fit for purpose as it had not assessed adequately the impacts of the cooling-off element of the *Subscription traps reform* IA. Specifically, the Department had not included appropriate evidence to support the assumptions relating to current voluntary compliance, or the costs of implementing this specific proposal. Additionally, the IA did not appear to consider sufficiently the overlap between interventions and possible double-counting of impacts, as well as not fully considering the effect of introducing cooling-off requirements for SMBs.

The Department, in the revised IA (post-initial review), has sought to address these likely, red-rated issues by providing further evidence, gathered through additional engagement with stakeholders to support the previous assumptions made. Additionally, the Department has sought to strengthen its consideration of the interactions between the subscription traps reforms interventions and discussion of their impacts on SMBs.

While the Department has sufficiently addressed some of the prior concerns raised in the RPC's initial review, such as providing appropriate evidence to support the assumptions on current voluntary action and discussing why SMBs are unlikely to offer such services currently, the overlap between interventions and possible double counting of impacts, previously highlighted, remain to be rectified appropriately.

Summary of proposals

The Bill covers a package of competition and consumer rights reforms intended to create a best-in-class competition law system fit for the digital age and to ensure consumer rights, and the civil mechanisms for their enforcement on behalf of consumers, keep pace with the speed of digital innovation.

The Bill includes the following package of competition policy reforms:

- a. Merger reforms to provide a more effective and proportionate review process.
- b. Market inquiries reforms to provide a more efficient, flexible and proportionate market inquiry process.
- c. Digital markets reforms⁵ that give power to the CMA to designate firms with strategic market status and impose conduct requirements and pro-competitive interventions.
- d. Stronger enforcement against unlawful anti-competitive conduct.
- e. Stronger investigative and enforcement powers across competition tools.

The Bill also includes the following updates to consumer rights and the process for civil enforcement of consumer protection law:

- a. Tackling subscription traps by strengthening and clarifying the law on pre-contract information so that consumers know for what they are signing; nudging consumers so they are aware of ongoing subscriptions; as well as

⁵ The RPC has provided a separate, green-rated opinion (RPC-DCMS-5078(2)) on the impact assessment for a new pro-competition regime for digital markets. This will be published alongside this opinion, for completeness.

making it easier for consumers to exit subscriptions and expanding the usage of cooling-off periods.

- b. Power to amend 'The Consumer Protection from Unfair Trading Regulations 2008' list of automatically-unfair practices, which is a new power for the Secretary of State to amend the list of automatically-unfair commercial practices.
- c. Better prepayment protections that require consumer prepayment schemes, such as Christmas savings clubs, to safeguard customers' money.
- d. Stronger enforcement of consumer protection by establishing an administrative process for the CMA in relation to certain consumer protection laws, where the CMA can decide itself whether these laws have been breached, direct compliance and remedies and impose civil monetary penalties. And providing the courts (in addition to the CMA) with new powers to impose civil monetary penalties in response to infringements of consumer protection laws, non-compliance with undertakings and non-compliance with information notices.
- e. Supporting consumers and traders to resolve more disputes independently, providing more support to consumers in individual disputes with traders by improving consumers' access to arbitration and mediation services.

The IA anticipates the package of measures to have an overall net present value of £4,847 million over the 10-year appraisal period, with the estimated impacts driven by the significant consumer benefits expected from the digital market reforms package.

Prior RPC assessment

The RPC has previously reviewed a standalone IA for the *Digital markets reforms* part of the Bill, as a submission from the Department for Digital, Culture, Media and Sport, issuing a green-rated formal opinion for that IA. Furthermore, the RPC has also already seen, and opined on, an IA for a draft version of the Bill (and its supporting annexed IAs). The draft Bill IA too received a green-rated formal opinion, however only after first being issued with an initial review notice due to concerns the Department had not made a sufficient case to apply the pro-competition exemption (in line with RPC competition guidance⁶) for the *Merger reforms* IA. Additionally, the RPC had concerns over the consideration of the aggregate impacts upon SMBs and whether some key assumptions within the *Subscription traps reforms* IA had been justified sufficiently.

This opinion reviews again the Bill in its entirety, considering the separate assessment made on the *Digital markets reforms* IA and the updated Bill IA, which now includes new proposals since last reviewed by the RPC. In particular, the IAs submitted now include the cooling-off policy (within the *Subscription traps reforms* IA) and a policy seeking to retain consumer protections (withing the *Wider reforms* IA).

⁶ <https://www.gov.uk/government/publications/rpc-case-histories-competition-assessments-october-2020>

EANDCB

Collective impact of interventions and resulting EANDCB

The Department, in the *Subscription traps reforms* IA, notes the interaction between the proposals and, through table 24, attempts to illustrate the respective quantified impacts of each intervention within those specific reforms. Despite this, it is not clear whether the analysis and final quantified impacts (including EANDCB) correctly account for the interaction and impact of those interventions that would have taken effect already.

For instance, the impacts estimated for the “cooling-off” policy assume there to be the same number of uncancelled subscriptions as there would be without the other interventions. The assessment, therefore, may not consider adequately the potential success of previous interventions, such as 'easy exit only'. Instead, it attributes reductions in unwanted subscriptions to the 'cooling-off' policy, even though these reductions might have already been influenced by other quantified measures. The RPC is, therefore, not confident that the EANDCB figure for the collection of interventions discussed in the *Subscription traps reforms* IA is robust.

Identification and quantification of impacts

The Department identifies a range of impacts across all of the measures included in the Bill. The IAs also makes a concerted effort to quantify as many of these impacts as possible, including the potential benefits of the various policies and reforms, to provide as comprehensive a picture as possible, although the wider consumer measures and cross-cutting reforms remain unquantified, with only a qualitative assessment of the impacts and limited cost-benefit analysis.

However, while the RPC acknowledges the difficulty faced by the Department in providing quantitative estimates for such a wide range of different measures, the evidence and analysis to support the quantification of the *Subscription traps reforms* IA is not sufficient. The Department has not provided suitable evidence to support the position, that the cost per business analysis covered earlier in the *Subscription traps reforms* IA (Tables 8, 9 and 10) is appropriate to inform the costs contained in Table 21. Furthermore, it is not clear precisely what these costs in Table 21 represent (e.g., what the implementation costs, in this specific context, cover). Furthermore, it is not clear why evidence relating to free trials is relevant to contracts longer than one year. The Department must explain why these earlier assumptions, evidence and analysis are an appropriate basis for these latter estimates, as well as demonstrate that the marginal impact upon the same firms would be equitable to those earlier impacts, and explain clearly what are the impacts of this specific policy.

The Department uses prior consultations and a variety of engagements to understand the areas of impact on consumers, businesses and the relevant enforcement bodies. In response to the RPC's initial review, the Department tested further with stakeholders, its identification of impacts for the *Subscription traps*

reforms IA. However, while the Department notes that those tested were part of prior consultation, the IA includes no discussion of the representativeness of the 24 respondents with whom the analysis was tested. In particular, it is not clear whether or not those engaged currently provide these services, therefore facing the additional requirements. Furthermore, as the cooling-off requirements were not consulted upon previously, this approach could lead to a selection bias with regards to respondents (i.e., those who may have had the most to provide with regards to this policy, may not have felt compelled to respond to prior consultation questions).

Justification of assumptions

The Department make use of a range of assumptions to inform the analysis included in the IA. Within *Subscription traps reforms* IA, the Department seeks to explain and set out the various surveys that inform its estimates of the value of in-scope subscriptions and the resulting impacts related to these. However, the Department should seek to explain more clearly the origin, and applicability, of the key assumptions underpinning both the initial familiarisation and IT costs. The Department has sought to justify these as consultation stage assumptions but should provide further detail on their origin and suitability, as well as any further engagement with industry made to support their usage.

In addition, the Department has an assumptions log where various assumptions are presented and comments (including the justification behind them) are made. Within this, the Department cites, on several occasions, the source of some assumptions to be 'BEIS expert assumption', while not always providing a full explanation of the appropriateness of this assumption and, on occasion, noting that this is not based on strong evidence. Similar to the comment above, the Department should set out what evidence informs these assumptions and why they are appropriate for use in the analysis.

Baseline

The Department, in the *Subscription traps reforms* IA, assume that there is a 20 per cent current compliance rate, despite the prior engagement with industry suggesting this to be 50 per cent. While the Department provides justification for this approach, the IA would be strengthened by clarifying why the position of 20 per cent is appropriate. Additionally, the Department has provided sufficient evidence to support the position on the baseline rate of provision of cooling-off periods for subscribers.

Direct and indirect impacts

The *Subscription traps reforms* IA notes in paragraph 53 "That means the main effect of these policies is neutral with respect to Net Present Social Value (NPSV), because it represents a transfer from businesses to consumers.", while noting previously, on page 3, "These consumers are likely to spend a large portion of these savings on other goods and services which provide better value-for-money" which would imply a positive indirect effect. Furthermore, while some businesses 'directly' experience lower revenue and lower profits from the regulation, other businesses will gain indirectly.

In short, this suggests that the direct and indirect impacts upon businesses would be broadly neutral (and for the UK economy as a whole) and that welfare should be improved significantly for consumers (as they benefit from their alternative expenditure). The Department should ensure that the consideration and aggregation of all impacts, direct and indirect, is consistent and reflects the true impact of the policy in the NPSV.

Future assessment

The RPC would expect that further IAs will be produced by the Department, as appropriate, for any related future secondary legislation. The RPC would expect to see a more detailed qualitative and quantitative cost-benefit analyses in any such IAs. The RPC would welcome discussion with the Department prior to submission of these IAs.

SaMBA

Scope

The IA does well to establish the scope of the SMBs likely to be affected by the various measures, as well as the range of impacts upon them. While the Department highlights where SMBs may face disproportionate impacts from the majority of the new requirements upon them (while also noting where SMBs stand to benefit from specific interventions), the discussion of the SMB impacts within the *Subscription traps reforms* IA should be supported with stronger evidence. Specifically, it is not clear whether SMBs (or trade bodies representing them) have been engaged to understand the impact upon them of the cooling-off requirements. The IA notes responses from business which, while noting that costs for SMBs may be smaller due to the size of the business, it neglects to consider the relative nature of costs to their size. Furthermore, the assertion made at that time, that costs such as familiarisation would not be disproportionate to SMBs, contradicts other statements made across the other IAs submitted for scrutiny, as well as the generally accepted position that familiarisation in fact has a disproportionate impact on SMBs.

The Department summarises the impacts upon SMBs arising from the Bill, however, it does not factor in the potential impact of the cooling-off requirements into this summative assessment. It is explained that, while some measures will be positive for SMBs, and others negative (with respect to costs and benefits), as the affected SMB populations differ, these impacts do not offset.

Exemption and mitigation

The Department makes it clear throughout, that an exemption for SMBs is not feasible, given the objectives of the policy centre around consumer protection and, therefore, allowing an exemption for some businesses would limit the success of the policy in achieving those objectives.

As noted above, the Department acknowledges that some SMBs may face disproportionate costs as a result of the proposed measures. In such instances, the Department has included some consideration of what mitigating actions could be implemented to support SMBs that may face disproportionate costs however, the Department should provide more detail of why mitigation cannot be offered to support SMBs on which the measures covered in the *Subscription traps reforms IA* would have a disproportionate impact.

Rationale and options

Rationale

The IA identifies a number of market failures, such as the negative effects of market power and information asymmetries between service providers and consumers, to support a rationale for intervention, however, the Department should seek to strengthen the case that regulatory intervention is necessary for all measures. The Department makes a good case in establishing how market concentration has increased (particularly in the case of nascent digital markets as discussed in the *Digital markets reforms IA*), to an extent that regulatory intervention is necessary to ensure consumer protection.

However, the Department does not establish a strong case, in the *Subscription traps reforms IA*, for why the subscriptions market cannot correct for the market failures that have been identified. In addition, within the *Subscription traps reforms IA*, the Department discusses how there is no clear correlation between the value-for-money that consumers deem a subscription to be and their desire to cancel, which would appear to contradict some of the discussion the Department builds into the rationale. The IA would benefit from the Department establishing a stronger case for the *Subscription traps reforms*, illustrating better and evidencing what is the market failure and why the market itself is unable to correct it. In particular, the IA should seek to strengthen the evidence for consumer inertia even when faced with clear information relating to their subscription terms, as well as making better use of international comparators, while also seeking to provide a stronger case for the individual measures (such as the ‘cooling-off’ policy) contained within the IA.

Options

The Department discusses a range of options within the various IAs that have been produced, which do include some non-regulatory alternative options (such as strengthening current guidance and introducing voluntary codes of conduct). However, while these are discussed, the Department has not sought to quantify the impacts of them. The IA would benefit from the quantification of these alternative options, which is then compared with the preferred options to illustrate better the additionality of the preferred options.

Cost-benefit analysis

Evidence and data

The analysis in the IA draws upon a range of sources, including various prior consultations, follow-up business surveys, consumer surveys and direct engagement with bodies such as the CMA. However, as noted above in the EANDCB section, the Department is lacking clear and robust evidence to support some key assumptions. In addition to these concerns over the evidence to support the aforementioned key assumptions, the Department's presentation of the evidence in the *Subscription traps reforms* IA is, at points, unclear (e.g., the discussion of evidence that has yet to be fully introduced). The Department should ensure that the evidence, and the presentation of it, is consistent and paints a clear picture for readers.

Methodology

The Department does well to include a description of how costs and benefits of the various measures have been estimated, however, at times these descriptions are not always clear. The IA would be improved by ensuring that all steps of the analysis carried out are set out fully and clearly.

While the impacts on cash flows are discussed briefly in the 'Subscription traps reforms' IA, the Department should consider, and discuss in more detail, the impact on businesses, specifically in relation to cash flow risks and forward business planning, due to the implementation of the 'cooling-off' policy. For example, at present a business may take the rolling over of a contract, or the paying for a service at the conclusion of a free trial period, as an indicator of future income and make decisions based on that. This new requirement placed on businesses may alter their approach to business planning, while also requiring higher levels of liquidity than at present, to be able to accommodate consumers seeking to use the new cooling-off functionality. Furthermore, businesses may choose to increase prices of subscriptions for all consumers, to mitigate against the potential uncertain revenue risk.

Wider impacts

Competition

As seeking to improve competitiveness in specific markets, as well as to target anti-competitive practices, are core aspects of the proposals, the Department includes a detailed consideration of the impacts on competition and market concentration where appropriate. The *Merger reforms* and *Digital markets reforms* IAs both provide a detailed consideration of the competition impacts, and this forms the basis of the respective analysis in each.

Innovation

The Department notes that increased competition can drive innovation, as firms seek to stand out from their competitors. In addition, the IA points to literature that argues that sub-optimal levels of competition may lead to lower levels of productivity growth. The IA should seek to develop further both of these aspects of innovation impact by linking the specifics of how the policy will work to the theories identified in the literature.

International trade and investment

The summary IA includes an assessment of the potential impacts on trade and investment, citing specifically the relationship between the UK's regulatory regime and the resulting attractiveness for international investors of the UK. While the RPC accepts this aggregate assessment of the collective impact upon trade and investment, the Department could strengthen its assessment of the trade and investment impacts of the specific measures through considering in more detail the inward investment impacts on directly-impacted firms, as well as the wider implications for the cost of doing business for firms seeking international investment.

Consumer impacts

Similar to the competition impacts, the impact on consumers is a core consideration by the Department, both in terms of the rationale for intervening and the assessment of impact. The Department, where possible, has sought to quantify the impacts on consumers and has included assessments of the distributional effects on protected groups. The IA would be improved, however, by considering what potential for cost pass-through to consumers there may be, from measures in the Bill that have an impact on business. More specifically, the IA should consider that as some businesses may experience a fall in revenues from a loss of subscriptions, but have the same fixed costs, a potential impact of the regulation will be for the affected businesses to just increase their subscription prices to compensate. In addition, the Department could make further use of the research by Ofgem and the FCA looking at consumer switching (that is mentioned in the IA) as a means of sense checking some of the IAs consumer-based assumptions.

Public sector

The Department engaged with the CMA, to inform understanding of the impacts of the proposed competition-focused measures, including those on the CMA itself (including the enforcement of the various proposals).

Monitoring and evaluation plan

The Department indicates that, where appropriate, individual M&E plans will be undertaken for various measures sought to be introduced through the legislation. However, the quality and detail of these assessments vary. In the *Subscription traps reforms* IA, the Department includes a well-developed M&E plan, using the logic

modelling (which establishes the relationship between the policy changes and the objective) as the basis for identifying what will be used to track and determine the effectiveness of the intervention. In addition, that M&E plan considers impacts on both consumers and businesses while, even at this early stage, the Department has considered what metrics will be monitored (including frequency). The Department should seek to develop, for other significant measures, M&E plans similar to the quality and detail of that included in the *Subscription traps reforms* IA.

In addition, the IA could be improved further, by considering whether an overarching M&E framework could be developed. Given the Bill's aims to improve competition and consumers collectively, as well as the development of a Bill level logic model, a set of metrics to assess overall effectiveness in these areas could be similarly tracked.

Regulatory Policy Committee

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