

# **Report to the Tyne and Wear Trading Standards Joint Committee**

**7 October 2021**

## **Update on the Government Consultation: Reforming Competition and Consumer Policy: Driving growth and delivering competitive markets that work for consumers**

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### **Purpose of the report**

To provide Committee with an update on the publication on the 20 July 2021 of the Government's Consultation: "Reforming Competition and Consumer Policy: Driving growth and delivering competitive markets that work for consumers".

### **Government's Position**

1. The Government's plan for growth sets out a strategy focusing on three pillars of investment – infrastructure, skills, and innovation – as the foundation on which to build the UK's economic recovery and long-term prosperity. This strategy underpins the Government's commitment to unite and level up the UK. Competition and consumer policy have a central role to play in delivering this mission and creating a thriving free market economy. Competition policy is crucial in driving innovation, productivity, and growth, and creating the right conditions for healthy competition between traders in markets. Consumer policy is vital in underpinning consumer confidence so they can engage in those markets in an assured manner, knowing that they have a strong set of legal rights that will be respected and enforced.
2. The Government believes that the UK starts from a strong foundation. The UK has internationally respected competition and consumer authorities. These authorities, the Competition and Markets Authority (CMA) in particular have delivered billions of pounds of benefits to consumers through generating lower prices, better products and services and a firm commitment to upholding consumer rights.
3. The Government believes that our economy capable of delivering long term prosperity requires world class competition and consumer policies. Unfortunately, there is increasing evidence that our competition and consumer policies are failing to keep pace with the challenges of the 21st century. The leading firms in some markets have increased their market power in recent years. There is evidence both internationally from the International Monetary Fund and domestically from the CMA which shows that overall levels of competition have declined in the decades since our legislative framework was last overhauled in 1998, and further since the 2008 financial crisis. The economic effects of the COVID-19 pandemic which have been felt up and down our country is likely to have compounded these challenges.

4. There are markets with stubbornly high levels of consumer harm, where problems are not being resolved, and consumer satisfaction is low. Although consumers in the UK generally trust traders to respect their rights, trust in the market system is on uncertain ground: in one survey, 53% of British consumers agreed with the statement that ‘capitalism does more harm than good’.
5. On top of this, these challenges come at a time of significant change of the UK’s competition and consumer policy. While the UK was a member of the European Union many of the most important decisions affecting competition in UK markets were taken or influenced by the European Commission. Now the UK has full autonomy to decide how we promote competition in our markets for the benefit of our citizens. This provides the competition authorities a newfound freedom to decide what markets or conduct to investigate, and what the best outcomes are for UK markets specifically.
6. Government recognises that the new autonomy brings opportunities, but it also brings additional challenges, especially for the enforcement of competition law in the UK. The CMA will now be conducting more investigations. These will not only be more strategically significant to the UK’s economy, but they are also likely to be more complex than many of the investigations previously undertaken by the CMA. So, the CMA must have the right resources, powers, and procedures to deal with these cases effectively and efficiently to deliver the best outcomes for the UK.
7. Government set out the ambition in Building Back Better: their plan for growth to make the UK’s competition regime ‘best in class’. These reforms seize the opportunity of the UK being able to chart its own way now that the UK has left the EU to deliver that ambition. This package of reforms will also deliver on the ambitions set out in the 2018 Consumer Green Paper, and address reforms to the CMA proposed by the then Chair, Lord Tyrie in February 2019, and by John Penrose MP in his February 2021 report.
8. The reforms in the consultation cover three areas: competition policy, consumer rights, and consumer law enforcement.
9. A separate consultation sets out a vision for the UK’s new pro-competition regime for digital markets, to tackle the unique challenges of fast-moving digital markets and the powers of the new Digital Markets Unit, already operating in non-statutory form within the CMA. The regime will aim to boost competition and innovation by tackling the sources of market power.

## **Competition policy**

10. Government views competition as at the core of innovative well-functioning markets. Promoting healthy competition in markets creates the right incentives for traders to innovate to offer the best deal for consumers to win the most custom, for example by reducing barriers to entry for new firms with new ideas.
11. The UK’s internationally well-regarded competition regime seeks to keep markets competitive by:
  - Preventing businesses from restricting competition.

- Screening mergers to prevent anticompetitive consolidation and maintain rivalry.
- Intervening in markets to unblock competition.
- Advising government on how its policies will affect competition.

12. Despite the actions that the UK has taken to promote competition, there is evidence from the CMA that competition in the economy may have weakened over the last 20 years. It is therefore essential that the competition regime does more to encourage and maintain competitive markets.

13. The UK needs a competition policy that delivers greater competition, innovation, and growth in UK markets. Recognising this, government has actively encouraged a debate on the upgrades required, seeking contributions from Professor Furman, Lord Tyrie in his role as Chair of the CMA, and John Penrose MP. They have argued that the regime can be slow and lacking in the powers necessary to prevent harms in the UK's 21st century economy.

14. In response, Government is proposing a package of competition policy reforms to fix the problems identified and ensure that the UK makes the most of the opportunities presented by leaving the EU.

15. The first step to delivering this is a more active pro-competition strategy to deliver more targeted and effective pro-competitive interventions capable of driving new growth and innovation in key UK markets. This includes:

- Adopting the advice of John Penrose's report to use the CMA as a micro-economic sibling for the Bank of England to better monitor the state of competition in key UK markets.
- Providing the CMA with clearer and more regular steers from government to help align the UK's competition policy with Building Back Better.
- Requesting advice from the CMA on how competition law can better support the UK's transition to an environmentally sustainable and net zero economy.

16. However, for open, fair, and competitive markets to be created and maintained UK competition authorities must have the tools they need to deliver this. The UK needs a best-in-class competition law system fit for the 21st century and the digital age. To deliver this government is consulting on the following five-point plan to update the UK's competition regime.

### **More effective market inquiries**

17. Reforms here will provide a more efficient, flexible, and proportionate market inquiry process. The reforms proposed include:

- Changes to the structure of the market inquiry process to allow the CMA to tackle harms sooner.
- Enabling the CMA to use interim measures in market investigations, to prevent potential harm while its investigations continue.
- Greater flexibility for the CMA to define the scope of market inquiries.
- New powers to resolve competition concerns more quickly through binding commitments.
- A more versatile and effective process for remedy design.

- Greater flexibility to monitor and review remedies from previous market inquiries. A rebalanced merger control regime
18. Reforms will provide a more effective and proportionate review process. On most metrics, the UK's merger control system is working well. However, there remains room for improvement. The reforms proposed include:
- Revised turnover thresholds to help reduce the potential burden of merger control on small businesses.
  - A new jurisdictional threshold to better address emerging threats to competition such as 'killer acquisitions' in fast-moving markets.
  - Reforming the CMA's investigative procedures to make these quicker and more efficient.

## **Reforms to the CMA's Panel**

19. Reforms to the CMA's Panel will deliver faster and more consistent decisions in merger and market inquiry cases. The reforms proposed include:
- A smaller, more dedicated pool of Panel members to help to speed up cases.
  - A revised role for CMA Panel members to allow the CMA greater administrative flexibility in investigations. Stronger enforcement against unlawful anticompetitive conduct
20. Stronger enforcement will deliver faster and more flexible investigations which identify and resolve unlawful anticompetitive conduct more quickly. The reforms proposed include:
- Greater incentives for businesses and individuals to inform the CMA of unlawful anticompetitive conduct.
  - Stronger interim measures to ensure the CMA can intervene to prevent harm, where this is necessary while investigations are ongoing.
  - More effective processes for the CMA to conclude investigations more quickly through agreements with the business under investigation.
  - Streamlining the CMA's handling of the evidence it obtains.
  - Greater flexibility for the CMA in its decision making.
  - Reviewing appeal procedures and standards of review.

## **Stronger investigative and enforcement powers across competition tools**

21. Reforms will deliver more consistent, efficient, and effective investigative procedures across the CMA's competition tools. The reforms proposed include:
- Stronger powers to obtain information and sanction companies which refuse to cooperate or comply with the CMA's investigations and remedies.
  - Stronger powers to facilitate more effective cooperation and collaboration between the UK's competition authorities and their international counterparts.

## **Consumer rights**

22. Consumer rights play an essential part in fair, free and competitive markets, providing consumers with the confidence to choose how and where they spend. Fair treatment of consumers must give traders a commercial advantage and those who misbehave must not undermine the commercial success of those who

abide by the law. Now, in the wake of the pandemic, it is especially right to consider opportunities for strengthening consumer rights, where consumer confidence will be critical to the revival of markets. No one should feel they are being left behind or excluded from the benefits of the legislation.

23. The UK operates a concurrency regime for competition law enforcement with sector regulators having the power to carry out competition enforcement in the regulated sectors for which they are responsible. Unless the context indicates otherwise the proposed reforms to the CMA's competition law enforcement powers or procedures set out in this consultation would also apply to the concurrent regulators' competition law enforcement powers or procedures. Consumer protection legislation plays a crucial role in ensuring that competition and markets work for everyone.

24. Markets are continually changing and adapting to new opportunities. These changes bring myriad benefits to consumers in the form of better, more valuable services, and to businesses in the form of growth and higher profits rewarding their innovation. Building on the UK's strong track record of consumer rights must, therefore, be balanced with proportionate requirements for businesses, particularly SMEs. Consumer rights must keep pace with market innovations, so that consumers remain confident engaging with businesses offering new products and services, and markets must retain the flexibility to continue developing and meeting consumers' evolving needs.

25. Government has identified two main developments where there is an opportunity to update consumer rights:

- The rise of online shopping accelerated by the pandemic: There has been a stark increase in online shopping during the pandemic. Websites are increasing the collection and use of consumer data, and some are using this insight unfairly to exploit consumers' behavioural biases, forcing them into purchases they would not have otherwise made – for instance by presenting options in a way that leads consumers to make choices to their potential detriment. Fake reviews are also rife online. This has been a subject of a series of investigations by Which? and by the CMA.
- An increase in subscription contracts: Estimated consumer spending on subscriptions is between £28 billion and £34 billion a year across multiple sectors. While subscriptions can be convenient and low-cost way to purchase goods, services, and digital content for consumers, they are not without issues. For example, some traders make it too difficult for consumers to cancel a subscription. This can cause ongoing detriment because such subscriptions can auto-renew, sometimes indefinitely, for goods, services, or digital content that a consumer does not need or want.

26. Government is proposing a series of updates to consumer rights to keep pace with these developments.

### **Tackling subscription traps**

27. Tackling subscription traps by strengthening and clarifying the law on pre-contract information so that consumers know what they are signing up for and are given a choice on auto-renewal; nudging consumers so they are aware of

ongoing subscriptions; and making it easier for consumers to exit subscriptions. Amazon reported that their online sales grew by 45% in 2020, their highest growth in 12 years.

## **Preventing online exploitation of consumers**

- Strengthening the law to better prevent posting of fake reviews online.
- Championing ‘fairness by design’ principles in how online transactions are presented. Better prepayment protections
- Strengthening prepayment protections for consumers by amending the law to mandate that consumer prepayment schemes like Christmas savings clubs have means to safeguard customers’ money e.g., through insurance or trust accounts.

## **Consumer Law enforcement**

28. For consumer rights to have an impact on and improve the function of markets, traders must comply with the law and consumers must have confidence that their rights will be respected. To achieve this, traders must have sufficient understanding of the law that they do not accidentally breach the law in a way that harms consumers, and consumers must have the confidence to engage. Consumers and traders must be empowered to resolve disputes between themselves, and state enforcers must have the right powers to step in where consumers and traders cannot resolve disputes.
29. The majority of consumer transactions do not involve any dispute between a trader and a consumer caused by a breach of the law. Where these do arise, either can, in general, bring the dispute before a court for resolution. If this is seen as an unattractive option, there are Alternative Dispute Resolution services like mediation and ombudsman services frequently on offer that provide an easier, lower cost alternative to the courts.
30. Where traders engage in actual or likely breaches of certain consumer protection laws, which harm the collective interests of consumers, the CMA and certain other public enforcers and regulators can bring court proceedings to prevent or stop the breach and obtain redress for consumers.
31. Where a trader has committed a criminal breach of the law affecting the collective interests of consumers, those with the power to investigate and enforce the law include local authority trading standards services who generally take a lead on consumer matters. They generally act independently for issues in their local areas and receive support and coordination from National Trading Standards and Trading Standards Scotland where cases are large and complex.
32. This system generally works and has delivered significant benefits. However, there are remaining weaknesses which are undermining consumer confidence and exposing traders to unfair competition:
  - The CMA and the economic regulators do not have the powers to act quickly and decisively to seek solutions to aid the collective interests of consumer in markets, and there are only weak sanctions available to them to deter breaches of the law.

- The provision and quality of alternative dispute resolution services is patchy and inconsistent, so not enough consumers and traders can benefit.
- **Local authority trading standards services could be better supported to act on behalf of consumers in their local areas and beyond.**
- Despite traders already having access to relevant guidance and advice on their responsibilities, there may be scope for improving the delivery of guidance to better meet traders' needs.

33. Government is proposing a package of reforms to the enforcement of consumer law to address these issues.

### **Stronger enforcement powers for enforcers**

34. Allowing the CMA to decide for itself where consumer law has been breached, which is an approach mirroring their abilities in competition law enforcement.

- Government is seeking views on the scope, decision-making process, and appeals process of this system, including appropriate safeguards to traders.
- Testing the case for extending these powers and abilities to economic regulators.
- Fines of up to 10% of global turnover for traders that breach consumer protection law.
- Sanctions for traders that seek to frustrate, delay, or otherwise not comply with the enforcement process including flouting information gathering powers and breaching undertakings. 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, thus avoiding the need to go to court. This includes a proposal to make arbitration/mediation compulsory in the used car and home improvement sectors where consumer detriment is relatively high.
- Improving the quality and oversight of alternative dispute resolution services.
- Improving consumer awareness and signposting.
- Seeking views on making it easier for consumers to band together to seek redress collectively from traders.
- Supporting local authority trading standards services tackling rogue traders
- How national and local enforcement can work together to tackle national scams. Giving businesses the right support to comply with consumer protection law
- Seeking views on whether the current business education offer meets businesses' needs and how it can be improved.

## **Recommendation**

The Committee is asked to note the information. A response from the region to the consultation has now been submitted.

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1004015/CCS001\\_CCS0721951242-001\\_Reforming\\_Competition\\_and\\_Consumer\\_Policy\\_E-Laying.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1004015/CCS001_CCS0721951242-001_Reforming_Competition_and_Consumer_Policy_E-Laying.pdf)

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