

Which?

Written Evidence - Committee Stage (House of Commons) Digital Markets, Competition & Consumers Bill

Introduction

The introduction of this landmark Bill will modernise and update the UK's competition and consumer laws. The Bill supports greater competition, and consumer choice and protection by addressing fundamental short and long-term challenges in the UK economy.

We welcome three key elements of this Bill. Measures that will:

- Empower the CMA's **Digital Markets Unit (DMU)** to enable open, fair and competitive online markets and level the playing field between the big tech platforms and other companies by strengthening competition rules.
- Enhance the role of the **Competition & Markets Authority (CMA)** by giving it new powers to administer fines to non-compliant firms that are ripping off consumers.
- Advance the UK's **Consumer Protection laws** to ensure people are getting the fairest possible deal.

The cost of living crisis has heightened the need to address the rip-offs, scams and rogue traders that cause consumers misery. It is estimated that up to a third of people experience at least one problem with a product or service every year and consumers suffer harm worth £54bn a year.

This Bill is vital for supporting both businesses and consumers by facilitating the right market conditions to improve business practice, encourage innovation, protect consumers from modern harms, and grow the economy.

Whilst strongly welcoming this Bill, we believe the provisions within Part 1, whilst very beneficial for consumers and businesses, could be strengthened, such as by **replacing the Countervailing Benefits Exemption (clause 29)** and **expanding measures to enable wider access to justice for consumers (consumer redress) (clause 99)**.

Consumer protection provisions should also be strengthened by **adding Fake Reviews and Drip Pricing to the list of banned practices (schedule 18) on the face of this Bill**, and subjecting them both to criminal enforcement.

To aid the Committee's line-by-line scrutiny of the Bill this briefing sets out our views following the Bill's order.

Which?

Digital Markets (Part 1)

The Bill will empower the CMA to promote competition in digital markets through its [Digital Markets Unit \(DMU\)](#). The DMU will oversee a new regulatory regime for the most powerful digital firms, promoting greater competition and innovation and protecting consumers and businesses from unfair practices.

We believe a healthy and competitive tech sector brings significant benefits to the UK economy, such as greater investment, skills and jobs. It also directly benefits UK consumers, as our everyday lives are increasingly dependent on new technology-enabled products and services.

Overall, **the design of the DMU's powers has created an enviable model for the pro-competition regulation of big tech.** This model is proportionate and flexible compared with other jurisdictions. For example, the process to designate a big tech firm with 'strategic market status' is less rigid than in the European Union's Digital Markets Act (DMA), as that model creates a unyielding set of 'do's and don'ts' that a much wider range of companies must follow, rather than address bespoke solutions for each firm. The UK's more flexible approach allows the regulator to keep pace with fast-changing technological changes including generative AI, while the ambition of the 'participative' regulatory approach should be to make the UK an attractive jurisdiction in which firms can invest and innovate to the benefit of UK consumers and the economy.

Appeals process (Clause 101)

The design of the appeals process, through *Judicial Review*, **is critical to ensuring the CMA via the DMU can implement and enforce the pro-competition regime successfully and in a timely manner.**

The judicial review standard is most effective, as it will provide the necessary legal scrutiny and will allow decisions to be reached in an efficient and robust manner, giving consumers and businesses clarity sooner rather than later. The judicial review standard will be applied by the Competition Appeal Tribunal, which has specialist expertise and experience in dealing with both competition and regulatory cases, therefore it is well-equipped to identify any clear errors of either law or reasoning by the CMA (to the extent that is compatible with the judicial review standard). Indeed, the Competition Appeal Tribunal already applies the judicial review standard to other CMA decisions, for example merger inquiries and market investigations.

Some big tech firms may be pushing the Government for the appeals process to become a 'Full Merits' standard. We strongly disagree with this. Such a standard would lead to far more protracted court proceedings and allow big tech firms the opportunity to throw money at lengthy legal cases, tying up the DMU's resources and potentially disincentivising the DMU from taking important regulatory interventions. **This could fundamentally undermine the proportionality and flexibility of this pro-competition regime.**

Further, a **full merit standard approach would undermine the participative approach** of the new regime as designated firms will have far less incentive to work with the CMA. For example, rather than provide the CMA with useful evidence to inform the conduct requirements and pro-competition interventions, firms would be more likely to focus on challenging the CMA's decisions in the courts and may seek to undermine CMA's decisions

Which?

by waiting to submit new evidence to the courts. For these reasons **the Government must remain steadfast and ensure the judicial review standard remains in place.**

Whilst we broadly welcome the empowerment of the CMA to implement this new regime, its institutional design needs to safeguard against potential loopholes that enable the world's largest technology firms to evade necessary and proportionate regulation. We have concerns about two areas and believe provisions could be strengthened to improve consumer outcomes.

Countervailing Benefits Exemption (Clause 29)

The introduction of a 'countervailing benefits exemption' risks creating a loophole where big tech will be able to challenge conduct requirements through lengthy, tactical, legal challenges. This would tie up CMA resources and frustrate the intent of the legislation.

Whilst we agree that the design of the regime should encourage innovation and protect consumers, it is critical that these provisions do not inadvertently give designated firms a get out of jail free card from conduct requirements.

There should be no expectation that a countervailing benefits exemption should apply when conduct requirements are first imposed. In order to impose a conduct requirement the CMA must have consulted on it and the designated firm will have had the opportunity to argue that the conduct has countervailing benefits. However, it is possible that a subsequent innovation will give rise to potential consumer benefits and it would not be in the interests of consumers if these benefits could not be realised due to an existing conduct requirement. There is therefore a need for a mechanism to allow this to be taken into account. Unfortunately, the somewhat awkward, current design of the countervailing benefits exemption, which seems likely to encourage an adversarial rather than the intended participative approach, introduces such a mechanism in a way that risks the effectiveness of pro-competitive regulation. Moreover, rather than allowing an exemption to a bespoke conduct requirement, it would be better for the CMA to redesign the conduct requirement.

Which? believes that even without the countervailing benefits exemption the provisions in the Bill largely provide the safeguards needed to ensure that designated firms remain incentivised to innovate and that consumers get the benefit from these innovations. Specifically, under clause 27, designated firms will already make representations in relation to a conduct investigation that the CMA must consider before making a finding that an undertaking has breached or is breaching a conduct requirement. Further, under clause 25, the CMA must keep under review whether to (impose,) vary or revoke a conduct requirement.

We are therefore proposing amendments which will allow the CMA to consider the potential consumer benefits of factors resulting from a conduct requirement, but remove outright the provisions forcing the CMA to close a conduct investigation.

[\(See Amendment 1.0\)](#)

Which?

Right to Bring Civil Proceedings (Clause 99)

Under the Bill, breaches of requirements (such as conduct requirements and Pro-Competitive Interventions) are made subject to a right of action for individuals to claim compensation for losses. This can be achieved either through making a claim in the Competition Appeal Tribunal or to a court. **However, there is currently no option for collective proceedings, where consumers and businesses would be able to make a collective redress claim in circumstances in which multiple parties have been harmed by the breach.** This is inconsistent with other UK competition law as collective proceedings are allowed following infringements of Chapter I and Chapter II prohibitions of the Competition Act 1998.

Collective proceedings promote an equality of arms ('strength in numbers') and facilitate access to justice on a wider scale. The consequence of excluding collective proceedings is to create an inequity in access to justice because the Bill only provides the opportunity of redress to those who have the financial capability and resources to bring civil proceedings. Large firms with deep pockets will be able to make claims, but individual consumers and small businesses are likely to be excluded in practice. It could mean that consumers and small businesses will not be compensated for breaches relating to, for example, the unfair use of data, the application of discriminatory terms, conditions or policies or unknown changes to digital activities which affect a consumer or a small business (eg software updates, access issues), and so the profits of unlawful conduct would remain with the transgressing firm.

Further, a right of action for individuals to claim compensation for losses complements public enforcement as a strong deterrent against unlawful conduct. If this right can only be exercised by some individuals then the deterrent effect is less strong for some breaches. In this case, it could make it relatively more likely that consumers and small businesses will suffer harm from breaches of the requirements.

We also see little risk from introducing collective proceedings. The collective actions regime for competition law infringements has shown that safeguards can be adopted to ensure that proceedings are not initiated unmeritoriously. Claims are typically funded by third-party litigation funders due to their breadth and scale, therefore necessitating an extensive due diligence process. Further, these claims cannot proceed without a rigorous certification process before the Competition Appeal Tribunal (the "Tribunal"), which requires an assessment of the adequacy of the proposed class representative and their arrangements for bringing the claim. Further, opt-out proceedings (where claimants are automatically included within a class) are restricted to UK-domiciled claimants.

We are therefore proposing amendments to Clause 99 to expand the right to bring civil proceedings by also including collective proceedings as a right of private action.

[\(See Amendment 1.1\)](#)

Which?

Enforcement (Part 3)

The CMA is the UK's lead enforcer of consumer and competition law. We believe the CMA is a proactive regulator, which looks to use its soft power alongside its formal powers, to support competition in the economy and to uphold the rights of consumers. However, it currently lacks a sufficient range of legal powers to enable it to take rapid action against firms that break consumer law. **The Bill will rectify this by giving the regulator more effective fining powers.**

The impact of a lack of powers has meant that action against companies that flout consumer law can take years to complete. As an example, [it took nearly six years under the current regime for Viagogo \(a secondary ticketing company\) to finally change its practices](#) and follow CMA guidance on the information it must give to consumers. In contrast, in Canada, [secondary ticketing sites Ticketmaster and Stubhub faced immediate fines of millions of dollars for not complying.](#)

The Bill will enable the regulator to impose a monetary penalty of up to 10% of a businesses total value of its turnover in the case of a breach of consumer law. The Bill will not only hand the CMA these welcome new fining powers through an administrative regime, it will enable the regulator to have a simplified process for investigations to allow them to intervene more effectively where there are breaches of consumer law.

These two measures, combined, will allow the regulator to take action without going through the courts, with faster resolution for consumers and a more effective deterrent for companies that don't play by the rules. The Bill also ensures that these new powers apply to companies that direct their activities towards UK consumers, but are based abroad, meaning the regulator has a wider scope across multiple jurisdictions rather than just the UK market.

The Bill will also grant Trading Standards better powers to access relevant information to aid their investigations, in particular accessing information held on the cloud and overseas.

Which?

Consumer Protections (Part 4)

The Bill reforms and refreshes key consumer protection laws. These are fundamental legal bulwarks that protect consumers, and are the regulations that enable people to have trust and confidence when purchasing a product or service. **Our consumer laws are desperately out of date, and therefore this Bill represents an opportunity to give consumers more power and control over the everyday economy.**

The Bill's measures on consumer protections also help to address the modern harms that consumers are most likely to encounter. It is good for businesses as protecting consumer rights improves trust between consumers and businesses; helping them to have more faith in trying new products and services, which are vital for economic growth.

Consumer law in the UK is set out in different pieces of legislation that support and uphold our consumer rights and protections. One of these is the Consumer Protection from Unfair Trading Regulations 2008 ('CPRs').

A key part of these regulations is the 'banned practice list', which sets out unfair trading practices that are currently prohibited in law.

The Bill will reform the CPRs (Part 4, Chapter 1) by:

- Revoking the existing regulations (which implemented an EU Directive) and reasserting a similar set of provisions in UK primary legislation
- Enabling the Secretary of State to amend the list of banned practices and add new bans for specific consumer harms over time, where necessary

Whilst we broadly welcome the transferring of these regulations, we propose a series of amendments to firstly address the effectiveness of how these provisions have been drafted, and to explicitly include Fake Reviews and Drip Pricing on the face of this Bill as banned practices.

Right to Redress (Clauses 224-227)

Whilst the CPRs remain broadly intact, there are instances where the original CPRs have not been replicated from Retained EU Law in a way that best helps consumers. For example, the Bill states that 'Consumer Rights to Redress' may be provided for in future secondary legislation, so it will give the Secretary of State powers to amend these rights. These rights are fundamentally important, as they include payment of damages when a trader misleads a consumer. **We want assurances that they will not be downgraded as a result of this process, and a commitment from the Government to strengthen redress procedures when these new regulations are drafted.**

Our proposed amendments would ensure a consumer's 'right to redress' covers practices such as 'misleading omissions', 'breaches of professional diligence', 'omitting material information' and crucially the banned practices listed under schedule 18 of the Bill.

The amendments would also ensure any new secondary legislation on the right to redress is subject to the affirmative resolution procedure, ensuring that Parliament is able to properly scrutinise any changes to a consumer's right to redress.

[\(See Amendment 2.0\)](#)

Which?

Secretary of State Powers (Clause 234)

We remain concerned that the Secretary of State, through the provisions of this Bill, will be granted new powers to remove or revoke banned practices from the list of unfair trading practices. Whilst fully welcoming the ability of the Government to add or amend practices, we are unsure why the Government would invoke new powers to *remove* key consumer rights and protections. **If the Government is unable to explain which practices they wish to remove, we believe the Bill should be amended to limit this power to just adding and amending powers.**

Our suggested amendments will prevent the Secretary of State from removing a description of a commercial practice, as well as ensure the Secretary of State consults relevant third-parties before adding or amending descriptions of commercial practices in the future.

[\(See Amendment 2.1\)](#)

Fake Reviews (Schedule 18)

We welcome the commitment to add fake reviews to the banned list, but as the Bill is drafted there is no mention of fake reviews. Whilst we recognise the Government will look to introduce Fake Reviews to the banned list through secondary regulations, the lack of any mention in Schedule 18 means firms or individuals guilty of buying, selling or hosting fake reviews will not be subject to criminal enforcement, as new practices added via secondary regulations do not lead to a criminal offence.

This is a major concern, and risks undermining the introduction of these vital new consumer safeguards. [Our research](#) shows that consumers are more than *twice as likely* to buy poor quality products that have been boosted by fake reviews.

Given the average [UK household spends about £900 each year](#) after being influenced by online reviews, this is causing severe financial harm. If new rules aren't backed by proper enforcement, it may let rogue traders off the hook.

In addition, [the Department for Business & Trade have found 11-15% of reviews](#) in the categories they assessed were fake.

To give consumers and businesses the clarity they need, the Government should add Fake Reviews to the face of the Bill, and ensure the buying, selling and hosting of them are subject to criminal enforcement.

[\(See Amendment 2.2\)](#)

Drip pricing (Schedule 18)

We also propose an amendment to ban 'Drip Pricing'. We know that in many online markets people overpay for products and services because only part of an item's price is initially shown and the total amount to be paid is revealed only at the end of the buying process. For example, [multiple hotel booking firms were shown to have failed to have displayed compulsory charges](#) such as taxes, booking or resort fees in the headline price. However, while the use of these practices is common, the [CMA has found](#) its enforcement against drip pricing has been inhibited by the absence of an explicit ban.

Which?

Through adding this practice to this list, the government would mirror other countries that have introduced similar regulatory principles. [Canada recently prohibited some drip pricing activities under its recent Competition Act and the Junk Fee Prevention Act](#) has recently been introduced in the USA.

We welcome the Government's commitment to consult on drip pricing, and address the detriment caused by this practice. **However, this Bill presents a golden opportunity to take immediate action, and subject firms that are guilty of Drip Pricing to criminal enforcement which is only possible through primary legislation.**

We believe the Bill can be strengthened by tacking fake reviews and drip pricing on the face of the Bill. Otherwise these problems are left to a future Minister - with no guarantee they will take action - and to enable criminal enforcement which is currently not going to apply to fake reviews as this Bill stands.

Our suggested amendments expand the list of banned practices in Schedule 18 to include Fake Reviews & Drip Pricing. In order to support businesses and ensure that the impact of these requirements are clear, we would also expect that the CMA and the government would prioritise producing comprehensive guidance on these issues.

[\(See Amendment 2.2\)](#)

Subscription Traps (Clauses 245-273)

In contrast to fake reviews and drip pricing, new laws on 'subscription traps' are explicitly laid out on the face of this Bill, and we broadly welcome these provisions. These measures will go a significant way to empower consumers and help them keep them in control of their subscriptions, therefore avoiding financial losses.

Our investigations have found consumers are sometimes unable to exercise control over subscriptions - for example, cancellation options might be opaque or a business may fail to remind subscribers that their subscription is coming up for automatic renewal. Which? has previously highlighted how these problems are evident in subscriptions for catalogues, anti-virus software, and gym memberships. These Subscription Traps deceive people, and lead to people losing money which is difficult to recuperate.

However, the Government could have gone further within this Bill by explicitly including measures to address the following area:

Burden of Proof (Clause 264): there are gaps in the provision for pre-contractual information concerning the 'burden of proof' on consumers, in particular through drafting in sub-clause 7. In the case of a dispute between the consumer and a trader where the consumer has notified the trader that they would like to cancel, the burden of proof that they sent the cancellation lies with the consumer, and not the trader. We think this is unfair as it would create a disproportionate burden on consumers in situations where consumers cancel via means under the control of the trader. An example of this would be completing an online form, from the traders website, where no explicit confirmation has been given that the subscription has been cancelled.

Which?

Collective Redress for Consumers

Whilst strongly welcoming Part 4 of this Bill, we also continue to urge support for the introduction of a collective redress regime for consumer protection cases, as already exists for competition cases. This should work on an opt out basis and cover all aspects of consumer law. Third party funding should be allowed to cover costs, and costs should be capped to ensure public interest organisations are able to bring cases to court.

Alternative Dispute Resolution (Clauses 283-301)

The Bill repeals EU derived regulations relating to Alternative Dispute Resolution (ADR) and requires ADR providers to be accredited against a revised set of standards. This Bill seeks to strengthen the accreditation of ADR schemes, however it fails to address consumers' lack of access to ADR in key sectors.

Whilst we welcome the introduction of these measures to improve ADR, the Government has missed a golden opportunity to introduce a more effective system, namely through the mandating of a single ombudsman in sectors where there is significant consumer harm. This should include sectors such as Aviation, Home Improvements and Motoring, where we are seeing significant consumer detriment. The government has, for example, previously consulted on whether it should make business participation in ADR mandatory in the motor vehicles and home improvements sectors and found that the majority of respondents agreed that there was a strong case for this.

We would welcome a more forward looking vision from the Government, and for them to set out how ADR will be reformed in a meaningful way to give people more power and control over the resolution process when products and services go wrong and without having to resort to complex court processes. The current system is far too difficult for consumers to navigate, with the DBT's consumer detriment survey finding only 3% of consumers taking action noted they used an ADR service.

As currently drafted, the Bill includes some additional provisions around oversight and accreditation of ADR schemes but unfortunately these lack specific measures to ensure fairness for consumers and do not provide reassurance that they can work in practice. Furthermore, it does not address some of the more fundamental problems with ADR that often mean that the only viable route for consumers to attempt to seek redress is through navigating complex court processes.

Whether through this Bill, or an alternative legislative vehicle, we would urge the Government to consider introducing a mandatory single ombudsman in Aviation, Home Improvements and Motoring.

For more information, please contact publicaffairs@which.co.uk

Which?

Annex - Suggested Amendments

Highlighted text denotes changes to the Bill's text

Proposed Amendment 1.0

Clause 27: Consideration of representations

(1) Before making a finding that an undertaking to which a conduct investigation relates has breached or is breaching a conduct requirement, the CMA must consider any representations that the undertaking makes in relation to the conduct investigation.

(2) The CMA may have regard to any significant benefits to users or potential users that the CMA considers have resulted, or may be expected to result, from a factor or combination of factors resulting from a breach of a conduct requirement.

Delete Clause 29: Countervailing benefits exemption

Proposed Amendment 1.1

Clause 99: Rights to enforce requirements of this Part

(1) A relevant requirement is to be treated as a duty owed by the person that is subject to the requirement to any other person ("P") who may be affected by a breach of the requirement.

(2) Where a breach of a relevant requirement causes P to sustain loss or damage, P may bring civil proceedings against the person that has breached the requirement before the appropriate court or the Tribunal for damages, an injunction or interdict or any other appropriate relief or remedy.

(2A) For the purposes of subsection (2), collective proceedings in accordance with section 47A to 47E CA 1998 apply to this Part.

(2B) Section 47A CA 1998 (proceedings before the Tribunal: claims for damages etc) is amended as follows.

(i) in subsection (1) after "subject to the provisions of this Act" insert ", the Digital Markets, Competition and Consumers Act 2023".

(ii) after subsection (2)(b) insert "(c) section 99 of the Digital Markets, Competition and Consumers Act 2023".

(iii) after subsection (6)(b) insert "(c) a breach of a relevant requirement in accordance with section 99(4) of the Digital Markets, Competition and Consumer Act 2023".

Which?

(2C) Section 47B of CA 1998 (collective proceedings before the Tribunal) is amended as follows: in subsection (1) after "Subject to the provisions of this Act" insert ", the Digital Markets, Competition and Consumers Act 2023".

(2D) In Schedule 8A of CA 1998 (further provision about claims in respect of loss or damage before a court or the Tribunal), in Part 1 (interpretation), after sub-paragraph 2 (1)(b) insert

"(c) section 99 of the Digital Markets, Competition and Consumers Act 2023".

(3) Subsections (1) and (2) are subject to the defences and other incidents applying to actions for breach of statutory duty.

Proposed Amendment 2.0

224: Rights of redress

- (1) A consumer has rights of redress under this Chapter if each of the following four conditions is met.
- (2) The first condition is that—
- (a) the consumer enters into a contract with a trader under which the trader supplies a product to the consumer (a “business-to-consumer contract”),
 - (b) the consumer enters into a contract with a trader under which—
 - (i) the consumer supplies a product to the trader, and
 - (ii) the trader does not supply a product to the consumer (a “consumer-to-business contract”), or
 - (c) the consumer makes a payment to the trader for the supply of a product (a “consumer payment”).
- (3) The second condition is that—
- (a) the trader engages in a prohibited practice in relation to the product, or
 - (b) in a case where a consumer enters into a business-to-consumer contract for goods or digital content—
 - (i) a producer engages in a prohibited practice in relation to the goods or digital content, and
 - (ii) when the contract is entered into, the trader is aware of the commercial practice that constitutes the prohibited practice or could reasonably be expected to be aware of it.
- (4) The third condition is that the prohibited practice is a significant factor in the consumer’s decision—
- (a) to enter into the contract mentioned in subsection (2)(a) or (b), or
 - (b) to make the payment mentioned in subsection (2)(c).
- (5) The fourth condition is that the product concerned is not a product excluded from the application of rights of redress by regulations under section 225.
- (6) In subsection (3), “producer” means—
- (a) a manufacturer of the goods or digital content,
 - (b) an importer of the goods or digital content into the United Kingdom, or

Which?

(c) a person purporting to be such a manufacturer or importer by placing the person's name, trade mark or other distinctive sign on the goods or by using it in connection with the digital content,

and includes a producer acting personally or through another person acting in the producer's name or on the producer's behalf.

(7) In this Chapter, "prohibited practice" means an unfair commercial practice involving—

(a) a misleading action, ~~or~~

(ab) a misleading omission,

(b) an aggressive practice,

(c) a contravention of the requirements of professional diligence,

(d) an invitation to purchase which omits material information, or

(e) a practice that is listed in Schedule 18.

(8) For the purposes of subsection (7), section 217(4)(a) applies as if the reference to a transactional decision were a reference to any decision taken by a consumer to—

(a) enter into a business-to-consumer contract,

(b) enter into a consumer-to-business contract, or

(c) make a consumer payment.

225: Rights of redress: further provision

(1) The Secretary of State ~~must~~ ~~may~~ by regulations provide for ~~any of~~ the following descriptions of rights to be exercisable by a consumer who has rights of redress under this Chapter—

(a) a right to unwind in respect of a relevant contract or consumer payment;

(b) a right to a discount in respect of a supply of a product under a relevant contract;

(c) a right to damages in respect of financial loss, distress or physical inconvenience or discomfort.

Different provisions may be made in this respect for different descriptions of rights.

(2) Regulations under this section may include provision—

(a) about how a right is to be exercised by the consumer;

(b) for an amount of discount mentioned in subsection (1)(b) to be determined in accordance with the regulations;

(c) about the circumstances in which damages mentioned in subsection (1)(c) are or are not payable;

Which?

- (d) imposing conditions or restrictions on the exercise of a right;
 - (e) about the consequences of the exercise of a right;
 - (f) excluding products of a description specified in the regulations from the application of the rights of redress available under this Chapter.
- (3) Provision under subsection (2)(e) about the consequences of the exercise of a right may (among other things)—
- (a) provide for the termination of a relevant contract;
 - (b) require the trader to make a refund of an amount determined in accordance with the regulations;
 - (c) require goods supplied under a relevant contract to be returned or for payment to be made in respect of such goods.
- (4) In this section, “relevant contract” means—
- (a) a business-to-consumer contract;
 - (b) a consumer-to-business contract.
- (5) ~~The first~~ Regulations made under this section are subject to the affirmative procedure.
- ~~(6) Any other regulations under this section are subject to the negative procedure.~~

Proposed Amendment 2.1

234: Powers to amend this chapter

- (1) The Secretary of State may by regulations amend Schedule 18 (commercial practices which are in all circumstances considered unfair) so as to—
- (a) add a description of a commercial practice;
 - (b) remove a description of a commercial practice **that has been added by Regulations;**
 - (c) amend a description of a commercial practice.
- (2) If regulations under subsection (1) amend Schedule 18 so as to add a description of a commercial practice, the regulations must also amend section 229(8) so as to make that practice an excluded description of practice.
- (3) The Secretary of State may by regulations amend section 224(7) (rights of redress: prohibited practices) so as to—
- (a) add further commercial practices that are unfair under this Chapter to the list of prohibited practices;

Which?

- (b) remove from the list of prohibited practices any commercial practices that have been added by regulations.
- (4) The Secretary of State may by regulations amend section 222(2) (material information in respect of an invitation to purchase) so as to—
- (a) add descriptions of information;
- (b) modify descriptions of information;
- (c) remove descriptions of information added by regulations under this subsection.
- (5) Before making regulations under this section, the Secretary of State must consult—
- (a) persons, bodies or organisations who appear to the Secretary of State to represent the interests of traders;
- (b) persons, bodies or organisations who appear to the Secretary of State to represent the interests of consumers; and
- (c) such persons as the Secretary of State considers appropriate
- (6) Regulations under this section are subject to the affirmative procedure.

Proposed Amendment 2.2

Schedule 18: Commercial Practices which are in all circumstances considered unfair

32 Commissioning, incentivising or authorising the writing or submission of false consumer reviews or endorsements, in order to promote products.

33 Offering or advertising to submit, commission or facilitate false consumer reviews or endorsements.

34 Displaying consumer reviews of products on an online interface—

(a) without taking reasonable and proportionate steps to ensure that such reviews are submitted by consumers who have actually used or purchased the products in question;

(b) where any consumers who provided reviews were incentivised to describe certain products in a particular way, without taking reasonable and proportionate steps to ensure this is not the case; or

(c) in a way that deceives or manipulates consumers, or where a practice has been undertaken in relation to reviews that otherwise materially distorts or impairs the ability of consumers to make free and informed decisions, without taking reasonable and proportionate steps to ensure this is not the case.

Which?

35 At any stage of a purchase process, presenting a price for a product which omits obligatory or necessary charges or fees which are not revealed to the consumer until later in the purchase process.