# Sky's response to the Public Bill Committee's call for evidence into the Digital Markets, Competition and Consumer Bill

## Overview

Sky welcomes the opportunity to respond to the Public Bill Committee's call for evidence on the Digital Markets, Competition and Consumer (DMCC) Bill. Sky is supportive of key elements of the Bill, most notably those which will put the Digital Markets Unit on a statutory footing, and consider the overall shape of the proposed regime, based on specific, enforceable codes of conduct applied to firms designated as having 'strategic market status', to be a sensible, pragmatic, and justifiable approach to regulation in this area.

However we have serious concerns about Chapter 2 of Part 4 of the Bill, which aims to reform how subscriptions are governed. While there are current practices which cause consumer harm, we are deeply concerned that the proposals in the Bill are too prescriptive and broadly drawn and will add significant costs onto businesses - and by extension consumers - for marginal consumer gains. The imposition of rigid legislative requirements across such a broad scope of economic activity – as opposed to adopting a more targeted approach, with regulation operating on a principles-led basis – is a poor policymaking approach that risks harming innovation and productivity.

## Part 4, Chapter 2 - Subscription proposals

We recognise the intention behind the decision to introduce new rules in the DMCC Bill which will require traders who supply subscriptions to send more frequent reminders to customers and provide simpler and more straightforward means of exiting subscriptions. As stated in the Government's "Reforming Competition and Consumer Policy" consultation in 2021, this is to prevent practices which lead to subscriptions that *"auto-renew, sometimes indefinitely, for goods, services, or digital content that a consumer does not need or want"*[1]. We support this intention and, as a major provider of subscriptions, do not engage in practices that roll our customers over into long-term contracts that they cannot get out of.

We also support the policy approach that Government recommended in its consultation response to its "Reforming Competition and Consumer Policy" in April 2022. This set out a proportionate range of measures to tackle unwanted subscriptions, such as introducing reminders for consumers before a contract auto-renews onto a new term and creating a specific requirement for traders to ensure their consumers are able to exit a contract in a straightforward and timely way.

Subsequently, however, measures have shifted away from a high level, principles-based approach, with government opting instead for highly prescriptive requirements on the face of the Bill itself. This change was made without any substantive consultation with businesses[2], despite the material difference such an approach makes to compliance and implementation costs. The following clauses within the Bill are currently extremely prescriptive and fall on businesses of all sizes across all sectors of the economy who offer subscriptions:

- Clause 250, 251 and schedule 20 require traders to provide 6-monthly reminders to all customers with subscriptions, with detailed requirements on what needs to be included in these reminders on the face of the Bill, and even specifying a two-day window when they should be sent. These clauses are currently drafted in a way that assumes that the majority

[1] BEIS, Reforming Competition and Consumer Policy Consultation, 2021, pg 16, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1004096/CCS0721951242-001_Reforming_Competition_and_Consumer_Policy_Web_Accessible.pdf

[2] In this context we note that the accompanying impact assessment was described as 'not fit for purpose' and issued a red rating by the Regulatory Policy Committee. See https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1155596/RPC-BEIS-5224_2__DMCC_Bill_-_IA_f__-_opinion.pdf

of consumers do not have an awareness of which services they are subscribed to and are indeed not actively using those services on a daily or weekly basis.
- Clause 252(1)(a), (2), and (6) allow customers to cancel subscriptions via a single communication, with notice being able to be given to companies "by any means" (a definition so wide that it could include, for example, a Tweet or Facebook post, or any other communication sitting outside a business' customer management system).

These new rules will require in-scope companies to build significant new technical solutions to be able to comply with these rigid and inflexible requirements, which the Government's own figures in its Impact Assessment suggest will cost UK business £400 million to set up and £1.2 billion in the first year alone[3].

These high costs suggest that the proposals go far beyond the problem they are trying to address. Our consumer research shows that the majority of customers are aware of the subscriptions that they hold and know when they're up for renewal. 92% also found it easy or fairly easy to cancel their subscriptions currently, suggesting there is not a widespread issue[4].

Some of these requirements are also more onerous than those within regulated sectors – who are currently out-of-scope of the Bill. For example, for broadband and telephony services – that Sky also provides - Ofcom requires an auto-reminder to be sent annually rather than at 6-month intervals[5] and allows companies freedom in setting out cancellation process so long as there is no disincentive to switch or leave the contract[6]. In the insurance sector, which is also exempt from the provisions, the FCA handbook specifies that any measures on renewals only apply to insurance contracts that auto-renew onto a contract that has a duration of 10 months or more[7]. It does not seem rational or in any way proportionate that the measures in this Bill go beyond those in the vital services used by consumers in the UK.

Suggested remedies in the Bill are therefore disproportionate and place a significant ask on business resource for marginal consumer gains. This is resource that could be placed elsewhere, such as in Sky's case innovating for customers or continuing to further invest in the UK's content sector. These knock-on impacts will also be felt economy-wide across the different sectors who offer subscriptions and will be caught by these regulations – including smaller businesses who are more resource constrained and will invariably find it more difficult to adhere to these inflexible rules.

In addition, businesses have no certainty as to how long they will have to implement these new requirements given that no transition period is included in the Bill. For legislation that brought in changes of similar scope - e.g. the implementation of GDPR requirements - businesses were given more than two years to prepare for these changes. This coupled with broad delegated powers given to the Secretary of State to introduce further regulation via secondary legislation will only increase uncertainty for businesses.

**Proposed amendments**

We believe that any new measures on subscriptions should only be targeted at clearly identified areas of consumer harm. Given this, we propose a number of changes to the Bill:

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[3] DBT, Impact Assessment: Digital Markets, Competition and Consumer Bill subscription measures, April 2023,
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1152353/annex_2-subscription_traps_impact_assessment.pdf
[4] Sky subscription omnibus research, undertaken by Whitestone Insight, 2 May 2023
[5] https://www.ofcom.org.uk/news-centre/2020/companies-must-tell-customers-about-their-best-deals
[6] https://www.ofcom.org.uk/__data/assets/pdf_file/0016/112282/guidance-under-general-conditions-c1-contract-requirements.pdf
[7] https://www.handbook.fca.org.uk/handbook/ICOBS/6/5.html

- Auto-reminders in the Bill (Clause 250 & 251, and Schedule 20) should only apply to the first instance when a customer ends a fixed term contract and moves onto a rolling contract and ahead of an auto-renewal with a long-term renewal period, which it is hard for a customer to exit easily. This can be achieved by amending s.250(1) (b) to clarify that the reminders sent for any subsequent renewal payments after the initial reminder should only relate "***to a period which is 6 months or longer***". We believe that this change would bring this section in line with the Government's consultation response from April 2022, which said that the Bill would introduce a specific requirement on traders to send reminders to consumers before a contract auto-renews onto a new term.
- Alternatively, if the Government's policy intention has evolved beyond the publication of its consultation outcome, the Bill should remove the requirement to send regular renewal reminders when traders can verify that their goods and services are being actively used by the consumer. This ensures that more frequent reminders are sent to customers but clearly focuses these towards helping consumers end unwanted or unused subscriptions. We propose that the following language is added to the end of s.250 (2) to enable this differentiation – *"this subsection applies to a renewal payment….* ***unless the customer has received goods or services, or accessed digital content, under the subscription contract since the previous renewal payment***".
- On cancellations, government should return to the language used in its original consultation response in April 2022 and in s.252(1)(a), (2) and (6) replace the need for traders to make arrangements to enable cancellations from "*in a single communication*" and "*by any means necessary*" to ***" in a straightforward and timely manner***".
- Government should also commit at the earliest opportunity to provide a transition window for the subscription provisions in the Bill to provide the certainty that is needed for businesses to get ready for these changes. Ideally, this would be included on the face of the Bill and if not outlined in a government written or verbal statement.