

Digital Markets, Competition and Consumers Bill

AMENDMENTS
TO BE MOVED
IN GRAND COMMITTEE

Clause 2

BARONESS JONES OF WHITCHURCH

Clause 2, page 2, line 25, after “Chapter” insert “, taking account of analysis undertaken by the CMA on similar issues that have been the subject of public consultation.”

Member's explanatory statement

This amendment aims to ensure that the CMA are able to draw on previous analysis on issues relevant to the regulatory regime.

Clause 11

BARONESS JONES OF WHITCHURCH

Clause 11, page 6, line 36, at end insert “, and

- (c) give a copy of the statement to those undertakings that have not been designated as having SMS that are most directly affected.”

Member's explanatory statement

This amendment is one of a series that would ensure that challenger firms are able to access information about the regulatory framework on an equal basis to designated firms.

Clause 12

BARONESS JONES OF WHITCHURCH

Clause 12, page 7, line 9, at end insert –

- “(5) As soon as reasonably practicable after giving a notice under subsection (2), the CMA must give a copy of the notice to those undertakings that have not been designated as having SMS that are most directly affected.”

Member's explanatory statement

This amendment is one of a series that would ensure that challenger firms are able to access information about the regulatory framework on an equal basis to designated firms.

Clause 14

BARONESS JONES OF WHITCHURCH

Clause 14, page 7, line 36, at end insert –

- “(5A) As soon as reasonably practicable after giving an SMS decision notice, the CMA must give a copy of the notice to those undertakings that have not been designated as having SMS that are most directly affected.”

Member's explanatory statement

This amendment is one of a series that would ensure that challenger firms are able to access information about the regulatory framework on an equal basis to designated firms.

Clause 15

BARONESS JONES OF WHITCHURCH

Clause 15, page 9, line 3, at end insert –

- “(6) As soon as reasonably practicable after giving a revised SMS decision notice, the CMA must give a copy of the revised notice to those undertakings that have not been designated as having SMS that are most directly affected.”

Member's explanatory statement

This amendment is one of a series that would ensure that challenger firms are able to access information about the regulatory framework on an equal basis to designated firms.

Clause 20

BARONESS JONES OF WHITCHURCH

Clause 20, page 12, line 29, at end insert “, provided that the conduct is related to the relevant digital activity”

Member's explanatory statement

This amendment, along with another to Clause 20(3)(c), would ensure that the CMA can tackle anti-competitive conduct in a non-designated activity, provided that the anti-competitive conduct is related to a designated activity.

Clause 25

BARONESS JONES OF WHITCHURCH

Clause 25, page 14, line 23, at end insert “and

- (e) whether to take action in accordance with Chapter 4 (pro-competitive interventions) in respect of the extent to which it is complying with each conduct requirement to which it is subject and the effectiveness of each conduct requirement to which it is subject.”

Member's explanatory statement

This amendment would ensure that the CMA considers the efficacy of existing Conduct Requirements when considering whether to make Pro-Competitive Interventions.

Clause 26

BARONESS JONES OF WHITCHURCH

Clause 26, page 15, line 19, at end insert –

“(7) As soon as reasonably practicable after giving a conduct investigation notice, the CMA must give a copy of the conduct investigation notice to those undertakings that have not been designated as having SMS that are most directly affected.”

Member's explanatory statement

This amendment is one of a series that would ensure that challenger firms are able to access information about the regulatory framework on an equal basis to designated firms.

Clause 27

BARONESS JONES OF WHITCHURCH

Clause 27, page 15, line 24, at end insert –

“(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.”

Member's explanatory statement

This amendment would ensure that the CMA considers any significant benefits to users resulting from the breach of a Conduct Requirement when it is considering representations from designated undertakings as part of a Conduct Investigation.

Clause 28

BARONESS JONES OF WHITCHURCH

Clause 28, page 15, line 36, at end insert –

“(5) As soon as reasonably practicable after giving a notice under subsection (2), the CMA must give a copy of the notice to those undertakings that have not been designated as having SMS that are most directly affected.”

Member's explanatory statement

This amendment is one of a series that would ensure that challenger firms are able to access information about the regulatory framework on an equal basis to designated firms.

Clause 29

BARONESS JONES OF WHITCHURCH

Baroness Jones of Whitchurch gives notice of her intention to oppose the Question that Clause 29 stand part of the Bill.

Member's explanatory statement

This amendment is consequential on an earlier amendment to Clause 27, which would ensure that the CMA considers any significant benefits to users resulting from the breach of a Conduct Requirement when it is considering representations from designated undertakings as part of a Conduct Investigation.

Clause 30

BARONESS JONES OF WHITCHURCH

Clause 30, page 16, line 30, at end insert –

“(4A) As soon as reasonably practicable after giving the notice, the CMA must give a copy of the notice to those undertakings that have not been designated as having SMS that are most directly affected.”

Member's explanatory statement

This amendment is one of a series that would ensure that challenger firms are able to access information about the regulatory framework on an equal basis to designated firms.

Clause 31

BARONESS JONES OF WHITCHURCH

Clause 31, page 17, line 18, at end insert –

“(7A) As soon as reasonably practicable after making an enforcement order (including a revised version of an order), the CMA must give a copy of the order to those undertakings that have not been designated as having SMS that are most directly affected.”

Member's explanatory statement

This amendment is one of a series that would ensure that challenger firms are able to access information about the regulatory framework on an equal basis to designated firms.

Clause 32

BARONESS JONES OF WHITCHURCH

Clause 32, page 18, line 11, at end insert –

- “(6A) As soon as reasonably practicable after giving a notice under subsection (5), the CMA must give a copy of the notice to those undertakings that have not been designated as having SMS that are most directly affected.”

Member's explanatory statement

This amendment is one of a series that would ensure that challenger firms are able to access information about the regulatory framework on an equal basis to designated firms.

Clause 34

BARONESS JONES OF WHITCHURCH

Clause 34, page 19, line 12, at end insert –

- “(4A) As soon as reasonably practicable after revoking an enforcement order, the CMA must give a copy of the notice to those undertakings that have not been designated as having SMS that are most directly affected.”

Member's explanatory statement

This amendment is one of a series that would ensure that challenger firms are able to access information about the regulatory framework on an equal basis to designated firms.

Clause 38

BARONESS JONES OF WHITCHURCH

Clause 38, page 21, line 26, leave out “breached an enforcement order, other than an interim enforcement order,” and insert “breached a conduct requirement”

Member's explanatory statement

This amendment would allow the CMA to initiate the Final Offer Mechanism after a Conduct Requirement of the type permitted by clause 20(2)(a) has first been breached, provided that the other conditions in Clause 38 are met.

Clause 48

BARONESS JONES OF WHITCHURCH

Clause 48, page 27, line 39, at end insert –

- “(5) As soon as reasonably practicable after giving a PCI investigation notice or a revised version of the PCI investigation notice, the CMA must give a copy of the notice to those undertakings that have not been designated as having SMS that are most directly affected.”

Member's explanatory statement

This amendment is one of a series that would ensure that challenger firms are able to access information about the regulatory framework on an equal basis to designated firms.

Clause 51

BARONESS JONES OF WHITCHURCH

Clause 51, page 29, line 21, at end insert –

- “(7) As soon as reasonably practicable after making a pro-competition order, the CMA must give a copy of the order to those undertakings that have not been designated as having SMS that are most directly affected.”

Member's explanatory statement

This amendment is one of a series that would ensure that challenger firms are able to access information about the regulatory framework on an equal basis to designated firms.

After Clause 115

BARONESS JONES OF WHITCHURCH

After Clause 115, insert the following new Clause –

“Digital Markets Unit and CMA: annual statement to Parliament

- (1) The Secretary of State must, at least once each year, lay before Parliament a statement containing the Secretary of State’s assessment of the conduct and operation of –
 - (a) the Digital Markets Unit, and
 - (b) the CMA as a whole.
- (2) The first statement must be laid before 31 October 2024.
- (3) Each further statement must be laid before 1 February of each subsequent year.”

Member's explanatory statement

This new Clause would require the Secretary of State to lay before Parliament each year a written statement about the conduct and operation of the DMU and CMA.

BARONESS JONES OF WHITCHURCH

After Clause 115, insert the following new Clause –

“Duty of the CMA: Citizens interest provisions

- (1) The Enterprise and Regulatory Reform Act 2013 is amended as follows.

(2) After section 25(3) insert –

“(3A) When carrying out its functions in relation to the regulation of competition in digital markets under Part 1 of the Digital Markets, Competition and Consumers Act 2024, the CMA must seek to promote competition, both within and outside the United Kingdom, for the benefit of consumers and citizens.””

Member's explanatory statement

This new Clause would give the CMA a duty to further the interests of citizens – as well as consumers – when carrying out its digital markets functions under Part 1 of the Bill.

Clause 147

BARONESS JONES OF WHITCHURCH

Clause 147, page 93, line 25, at end insert –

“(c) the collective interests of consumers include avoiding any detriment that might be incurred by consumers if the United Kingdom does not reach a level of net zero carbon emissions by the year specified in section 1 of the Climate Change Act 2008.”

Member's explanatory statement

This amendment would mean that part of the test of whether a commercial practice had committed an infringement would be whether the commercial practice had failed to protect consumers from any detrimental effects arising from a failure to achieve net zero by the year specified in the Climate Change Act 2008 (currently 2050).

Schedule 19

BARONESS JONES OF WHITCHURCH

Schedule 19, page 362, line 18, at end insert –

“32 Marketing online products that are either –
(a) counterfeit; or
(b) dangerous.”

Member's explanatory statement

This amendment is consequential on an earlier amendment to Clause 229 and would insert into Schedule 19 (Commercial practices which are in all circumstances considered unfair) a reference to the marketing of counterfeit or dangerous goods.

BARONESS JONES OF WHITCHURCH

Schedule 19, page 362, line 18, at end insert –

“32 At any stage of a purchase process, presenting a price for a product which omits obligatory charges or fees (or an estimate thereof) which are payable by the

majority of consumers, which are not revealed to the consumer until later in the purchase process.”

Member's explanatory statement

This amendment would insert into Schedule 19 (Commercial practices which are in all circumstances considered unfair) a reference to the practice of “drip-pricing”, a technique where traders advertise only part of a product’s price and reveal other obligatory charges later in the buying process.

BARONESS JONES OF WHITCHURCH

Schedule 19, page 362, line 18, at end insert –

- “32 Claiming or otherwise creating an impression that a product –
- (a) is made of sustainable materials,
 - (b) is recyclable, or
 - (c) has a lower carbon footprint than similar products
- when such claims are not supported by evidence.”

Member's explanatory statement

This amendment would insert into Schedule 19 (Commercial practices which are in all circumstances considered unfair) a reference to popular greenwashing tactics, to probe what steps (if any) the Government and CMA are taking to prevent such practices.

Clause 229

BARONESS JONES OF WHITCHURCH

Clause 229, page 154, line 2, at end insert –

- “(4A) Where a commercial practice has been found to be unfair under paragraph 32 of Schedule 19 of this Act, any body listed as a public designated enforcer in section 150(1) of this Act may require the removal of the relevant online marketing from the internet.”

Member's explanatory statement

This amendment would allow enforcement bodies to remove the marketing of fake or counterfeit products from the internet. Other amendments in Baroness Jones of Whitchurch's name add paragraph 32 to Schedule 19 of this Bill.

After Clause 255

BARONESS JONES OF WHITCHURCH

After Clause 255, insert the following new Clause –

“Contract renewal: option to opt in

- (1) Before a trader enters into a subscription contract with a consumer where section 252(2) applies, the trader must ask the consumer whether they wish to opt-in to an arrangement under which the contract renews automatically at one or more of the following times –
 - (a) after a period of six months and every six months thereafter, or
 - (b) if the period between the consumer being charged for the first and second time is longer than six months, each time payment is due.
- (2) If the consumer does not opt-in to such an arrangement, the trader must provide a date by which the consumer must notify the trader of the consumer’s intention to renew the contract, which must be no earlier than 28 days before the renewal date.
- (3) If the consumer has not –
 - (a) opted into an arrangement under subsection (1), or
 - (b) given notification of the consumer’s intention to renew by the date specified under subsection (2),the contract will lapse on the renewal date.”

Member's explanatory statement

This new Clause would allow the consumer to opt-out of their subscription auto-renewing every six months, or if the period between payments is longer than six months, before every payment. If the consumer does not opt-in to auto-renewal, they would be required to notify the trader manually about renewing.

BARONESS JONES OF WHITCHURCH

After Clause 255, insert the following new Clause –

“Contract renewal: variable rate contracts

- (1) Before a trader enters into a subscription contract with a consumer where section 252(3) applies, the trader must ask the consumer whether they wish to opt into an arrangement under which the contract renews automatically on the date the consumer becomes liable for the first charge or the first higher charge.
- (2) If the consumer does not opt into an arrangement under subsection (1), the trader must provide a date by which the consumer must notify the trader of the consumer’s intention to renew the contract, which must be no earlier than five days before the renewal date.
- (3) The trader must also ask the consumer whether they wish to opt into an arrangement under which the contract renews automatically –

- (a) after a period of either six months from the first charge or higher charge and every six months thereafter, or
 - (b) if the period between the consumer being charged for the first and second time is longer than six months, each time payment is due.
- (4) If the consumer does not opt into an arrangement under subsection (3), the trader must provide a date by which the consumer must notify the trader of the consumer’s intention to renew the contract, which must be no earlier than 28 days before the renewal date.
- (5) If the consumer has not –
- (a) opted into an arrangement under subsection (1) or subsection (3), or
 - (b) given notification of the consumer’s intention to renew by the date specified under (as the case may be) subsection (2) or subsection (4),
- the contract will lapse on the next renewal date.”

Member’s explanatory statement

This new Clause would introduce an option for the consumer to opt-out of their subscription auto-renewing after their free or discounted trial. Otherwise, they would have to notify the trader manually about the subscription continuing. It also introduces an option for the consumer to opt-out of their subscription auto-renewing.

After Clause 288

BARONESS JONES OF WHITCHURCH

After Clause 288, insert the following new Clause –

“Consultation: CMA powers to address issues relating to ticket sales

- (1) Within the period of three months beginning with the day on which this Act is passed, the Secretary of State must lay before both Houses of Parliament a statement summarising –
- (a) work already undertaken by the CMA in relation to the sale and resale of event tickets, and,
 - (b) proposals for the granting of new powers or duties for –
 - (i) the CMA,
 - (ii) trading standards officers, or
 - (iii) other relevant regulators or actors in this area.
- (2) Within the period of six months beginning with the day on which this Act is passed, the Secretary of State must consult on the detail of the proposals mentioned in subsection (1)(b).
- (3) In preparing and consulting on the proposals, the Secretary of State must consult –
- (a) ticket sellers and resellers,
 - (b) artists and performers, or their representatives,
 - (c) consumers and representative organisations, and
 - (d) any other persons the Secretary of State deems appropriate.”

Member's explanatory statement

This amendment is to probe what steps (if any) the Government is taking to tackle long-standing issues in the event ticket sales and resales markets. The CMA reported on its work in this field in August 2021, making a number of recommendations to Government.

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