

Digital Markets, Competition and Consumers Bill

AMENDMENTS
TO BE MOVED
IN GRAND COMMITTEE

Clause 5

LORD CLEMENT-JONES

Clause 5, page 3, line 23, leave out from “out” to “that” in line 24 and insert “an assessment taking into account evidence of developments currently available to the CMA”

Member's explanatory statement

Without reliable evidence of a position in 5 years' time, the Digital Market Unit's SMS decisions for designation would be opened up for challenge and vulnerability gamed by SMS firms.

Before Clause 19

LORD CLEMENT-JONES

Before Clause 19, insert the following new Clause –

“Duty to disclose relevant digital activity in advance of the digital activity's implementation or effect

- (1) A relevant person must disclose to the CMA a relevant digital activity that may give rise to actual or likely detrimental impact on competition in advance of such digital activity's implementation or effect.
- (2) In this section, “relevant person” means a designated undertaking, or where a designated undertaking is part of a group, any member of that group.”

Member's explanatory statement

This amendment seeks to ensure that an asymmetry of information is not misused or a source of procedural advantage through requiring the designated undertaking to inform the CMA of digital activities that may have an impact on competition.

Clause 20

LORD CLEMENT-JONES

Clause 20, page 12, line 18, at end insert –

- “(f) improve data access, data portability and interoperability facilitated by the use of international technical standards.”

LORD HOLMES OF RICHMOND

Clause 20, page 12, line 18, at end insert –

- “(2A) In subsection (2)(c) “accessible” means that the digital activity is –
- (a) compatible with assistive technology; and
 - (b) compliant with the accessibility standards in the Public Sector Bodies (Websites and Mobile Applications) (No. 2) Accessibility Regulations 2018.”

LORD CLEMENT-JONES

Clause 20, page 12, line 34, leave out subsection (3)(e) and insert –

- “(e) restricting interoperability between or among the relevant service or between or among digital content and between or among products offered by other undertakings;”

Member's explanatory statement

This amendment makes a stronger and more explicit reference to the promotion of interoperability in digital markets.

Clause 29

LORD CLEMENT-JONES

Leave out Clause 29 and insert the following new Clause –

“29 Countervailing benefits exemption

- (1) Subject to subsection (2), the CMA must close a conduct investigation under section 28 where representations, supported with all documentary evidence and information available to the relevant undertaking, made by the undertaking to which the investigation relates, and after considering representations and evidence from other sources and third parties, lead the CMA to consider that the countervailing benefits exemption applies under subsection (3).
- (2) Where the undertaking is seeking to rely on the countervailing benefits exemption, it must notify the CMA thereof without delay in advance of implementation or effect and in any event no later than the end of the period within which the undertaking may make representations in relation to the conduct investigation

under section 26(4)(d) and provide it with the relevant information identified in subsection (1).

- (3) The countervailing benefits exemption applies where—
 - (a) the undertaking has applied to the CMA in accordance with subsection (2), before its the conduct to which the investigation relates gives rise to adverse effects on competitive activities or benefits to users or potential users of the digital activity in respect of which the conduct requirement in question applies;
 - (b) those benefits outweigh any actual or likely detrimental impact on competition resulting from the implementation of the conduct a breach of the conduct requirement;
 - (c) the conduct is indispensable and proportionate to the realisation of those benefits; and
 - (d) the conduct does not eliminate or prevent effective competition.
- (4) Where the CMA closes a conduct investigation as a result of subsection (1), the undertaking to which the decision relates is to be treated as if the CMA had found that the conduct did not constitute a breach of the conduct requirement.”

Clause 46

LORD CLEMENT-JONES

Clause 46, page 26, line 29, at end insert “and in particular access to data, data portability and interoperability”

Member's explanatory statement

This amendment makes a stronger and more explicit reference to the promotion of interoperability in digital markets.

After Clause 82

LORD CLEMENT-JONES

After Clause 82, insert the following new Clause—

“Duty to fully inform the CMA

- (1) In applying the provisions of this Act, the relevant designated undertaking has an overriding duty to ensure that all information provided to the CMA is full, accurate and complete.
- (2) The duty set out in subsection (1) includes a duty to—
 - (a) as soon as reasonably practicable, inform the CMA of any changes to the information provided;
 - (b) ensure that all information provided reasonably responds to the request.”

Member's explanatory statement

This amendment would create a duty to ensure the CMA is supplied with full and accurate information.

Clause 125

LORD CLEMENT-JONES

Clause 125, page 78, line 16, leave out “not”

Member's explanatory statement

Exemplary damages can only be awarded where intentional breach of the law can be proved. This bill makes these damages unavailable in collective proceedings, which are more likely to uncover deliberate breaches affecting many people. This amendment seeks to address this issue.

LORD CLEMENT-JONES

Clause 125, page 78, line 16, after “in” insert “any”

Member's explanatory statement

Exemplary damages can only be awarded where intentional breach of the law can be proved. This bill makes these damages unavailable in collective proceedings, which are more likely to uncover deliberate breaches affecting many people. This amendment seeks to address this issue.

Clause 126

LORD SANDHURST
LORD THOMAS OF CWMGIEDD
LORD ARBUTHNOT OF EDROM
LORD CARLILE OF BERRIEW

Clause 126, page 79, line 15, at end insert –

“(1A) In section 47C of the Competition Act 1998 (collective proceedings: damages and costs), after subsection (5) insert –

“(5A) An agreement under which –

- (a) the funder agrees to provide financial services or assistance in relation to –
 - (i) the provision of advocacy services or litigation services, or
 - (ii) costs that the funded party is ordered by a court or tribunal or in arbitration proceedings, or is otherwise legally obliged, to pay to any other party in relation to litigation; and
- (b) the recipient of financial services or assistance agrees to make a payment to the funder in specified circumstances

is not a damages-based agreement.”

- (1B) Where, before the passing of this Act, a person has entered into an agreement covered by section 47C(5A) of the Competition Act (inserted by this subsection (1A)), that agreement is not rendered unenforceable (or deemed to have been rendered unenforceable) by virtue of section 58AA(2) of the Courts and Legal Services Act 1990 and the amendment made by subsection (3) of that section is treated as having always had effect.”

Member's explanatory statement

In response to the decision of the Supreme Court judgment in R (PACCAR Inc) v Competition Tribunal [2023] UKSC to ensure that third party litigation funding agreements in respect of proceedings in the Competition Tribunal will (with retrospective effect) not be unenforceable in competition and consumer law, so such agreements will be treated as never having been subject to restriction.

LORD SANDHURST
LORD THOMAS OF CWMGIEDD
LORD ARBUTHNOT OF EDROM
LORD CARLILE OF BERRIEW

Clause 126, page 79, line 16, at end insert –

- “(3) For the purposes of competition and consumer law only, the Courts and Legal Services Act 1990 is to be read as if –
- (a) at the beginning of subsection (3)(a) of section 58AA (damages-based agreements) there were inserted ‘subject to subsection (3)(b)’ and at the end of subsection (3) there were inserted –
- “(b) in relation to consumer and competition law only, an agreement under which –
- (i) a person (the funder) agrees to provide financial services or assistance in relation to –
- (A) the provision of advocacy services or litigation services or
- (B) costs that the funded party is ordered by a court, tribunal or arbitrator, or is otherwise legally obliged, to pay to any other party in relation to litigation or arbitration; and
- (ii) the recipient of financial services or assistance agrees to make a payment to the funder in specified circumstances,
- is not a damages-based agreement; and”
- (b) at the beginning of subsection (4) of that section for “The agreement–” there were substituted “An agreement to which subsection 58AA(3)(a) applies–”
- (4) Where before the passing of this Act a person has entered into an agreement covered by subsection (3)(b) read into the Courts and Legal Services Act 1990 by virtue of subsection (3) of this section, that agreement is not rendered unenforceable

(or be deemed to have been rendered unenforceable) by virtue of section 58AA(2) of the Courts and Legal Services Act 1990 and the amendment made by subsection (3) of that section is treated as having always having had effect.”

Member's explanatory statement

In response to the decision of the Supreme Court judgment in R (PACCAR Inc) v Competition Tribunal [2023] UKSC to ensure that third party litigation funding agreements in respect of proceedings in any court of England and Wales will (with retrospective effect) not be unenforceable in competition and consumer law, so such agreements will be treated as never having been subject to restriction.

After Clause 140

LORD CLEMENT-JONES

After Clause 140, insert the following new Clause –

“Amendment of section 58 of the Enterprise Act 2002

After section 58(2A) of the Enterprise Act 2002 insert –

- “(2AA) The need for free expression of opinion and plurality of ownership of media enterprises in user to user and search services.
- (2AB) Media enterprises include –
- (a) newspapers,
 - (b) broadcasters, and
 - (c) providers of video on demand and audio on demand.
- (2AC) For the purposes of this section “user-to-user service” and “search service” are defined in Part 2 of the Online Safety Act 2023.””

Member's explanatory statement

This amendment updates the specified considerations that the Secretary of State can use to issue a public interest notice that reflect modern market conditions where new media may give rise to such concerns.

After Clause 145

LORD HOLMES OF RICHMOND

After Clause 145, insert the following new Clause –

“CMA permission for private enforcement claims

- (1) Complainants are required to obtain prior approval from the CMA to bring private enforcement claims in front of the Competition Appeals Tribunal or the High Court.

- (2) Complainants under this section include but are not limited to complainants under sections 47A (proceedings before the Tribunal: claims for damage etc) and 47B (collective proceedings before the Tribunal) of the Competition Act 1998.”

LORD CLEMENT-JONES

After Clause 145, insert the following new Clause –

“CMA power to apply to the High Court

- (1) Where, on the application of the CMA, the High Court is satisfied that a designated undertaking has engaged, or is proposing to engage, in conduct that constitutes or would constitute –
- (a) a contravention of any of the objectives as set out in section 19(5) or obligations imposed on the relevant designated undertaking;
 - (b) attempting to contravene such a provision;
 - (c) aiding, abetting, counselling or procuring a person to contravene such a provision;
 - (d) inducing, or attempting to induce, whether by threats, promises or otherwise, a person to contravene such a provision;
 - (e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of such a provision; or
 - (f) conspiring with others to contravene such a provision:
- the High Court may grant an injunction in such terms as the High Court determines to be appropriate.”

Member's explanatory statement

To enable the Digital Markets Unit to operate as a designated entity with the ability to apply to the High Court for interlocutory relief would increase its ability to move quickly and help change the designated platforms' incentives to cooperate.

Clause 149

BARONESS MORGAN OF COTES

Clause 149, page 94, line 4, at end insert –

- “(1A) A commercial practice also meets the specified prohibition condition if the commercial practice targets consumers with marketing material for products intended to be used by that person to take their own life.”

Clause 227

LORD HOLMES OF RICHMOND

Clause 227, page 152, line 1, at end insert –

- “(2) Examples of where a firm is not acting in good faith would include, but are not limited to –
- (a) failing to take account of customers’ interests, for example in the way the trader designs a product or presents information; and
 - (b) seeking inappropriately to manipulate or exploit customers, for example by manipulating or exploiting their emotions or behavioural biases to mislead or create a demand for a product.”

Clause 254

LORD CLEMENT-JONES

Clause 254, page 167, line 25, after “give” insert “, or make available,”

LORD CLEMENT-JONES

Clause 254, page 167, line 28, at end insert “in each case so far as that information is applicable to the contract, has not already been made available, and is not already reasonably apparent from the context.”

LORD CLEMENT-JONES

Clause 254, page 167, line 30, leave out paragraph (a)

LORD CLEMENT-JONES

Clause 254, page 167, line 36, leave “all be given together” and insert “be given, or made available, using such techniques as are reasonably necessary to bring that information to the attention of the average consumer”

LORD CLEMENT-JONES

Clause 254, page 167, line 37, after “given” insert “, or made available”

LORD CLEMENT-JONES

Clause 254, page 167, line 37, leave out “and any other information”

LORD CLEMENT-JONES

Clause 254, page 168, line 5, after “any” insert “unreasonable”

LORD CLEMENT-JONES

Clause 254, page 168, line 5, leave out “, other than the steps the consumer must take to enter into the contract”

LORD CLEMENT-JONES

Clause 254, page 168, line 8, at end insert –

“(f) it must be given as close in time to entering into the contract as is reasonably practicable.”

LORD CLEMENT-JONES

Clause 254, page 168, line 11, leave out “together” and insert “in such a way that the information is brought to the attention of the consumer”

LORD CLEMENT-JONES

Clause 254, page 168, line 13, at end insert –

- “(4A) Where a distance contract is concluded through a means of distance communication that allows limited space or time to display the information –
- (a) the information listed in paragraphs 2 and 4, of Part 1 of Schedule 21 must be provided on that means of communication in accordance with subsections (3) and (4); but
 - (b) the other information required by Part 1 and Part 2 of Schedule 21 may be provided in another appropriate way.”

Schedule 21

LORD CLEMENT-JONES

Schedule 21, page 370, line 8, leave out from “consumer” to end of line 9 and insert “cancels the contract or brings the contract to an end,”

LORD CLEMENT-JONES

Schedule 21, page 370, line 10, leave out sub-paragraphs (b) and (c)

LORD CLEMENT-JONES

Schedule 21, page 370, line 17, leave out “takes steps to bring” and insert “cancels the contract or brings”

LORD CLEMENT-JONES

Schedule 21, page 370, line 25, leave out paragraph 5

LORD CLEMENT-JONES

Schedule 21, page 370, line 28, at beginning insert “If different to the information referred to in paragraph 4,”

LORD CLEMENT-JONES

Schedule 21, page 370, line 31, leave from “payments” to end of line 35

LORD CLEMENT-JONES

Schedule 21, page 370, line 36, leave out paragraph (8) and insert –

“(8) That the consumer may prevent the contract from automatically renewing.”

Member's explanatory statement

This amendment, alongside others to Clauses 254 and 255 and Schedule 21, seeks to maintain the flexibility for traders as currently provided by the Consumer Contracts (Information Cancellation and Additional Charges) Regulations 2013 by taking account of the limited time and space available for providing pre-contract information for certain formats and connected devices and recognising that certain key pre-contract information may be apparent from the context.

Clause 255

LORD CLEMENT-JONES

Clause 255, page 168, line 38, leave out subsections (3) and (4)

LORD CLEMENT-JONES

Clause 255, page 168, line 38, at end insert –

“(2A) For contracts entered into online such express acknowledgement can be achieved by the consumer activating a button with the words “order with obligation to pay” or a corresponding unambiguous formulation indicating that placing the order entails an obligation to pay the trader.”

After Clause 288

LORD CLEMENT-JONES

After Clause 288, insert the following new Clause –

“Labelling of digital content

In Section 36(1) of the Consumer Rights Act 2015 (digital content to be as described), after “consumer” insert “, which specifically includes the labelling of digital content generated by artificial intelligence whether assisted or generated””

Member's explanatory statement

This amendment introduces labelling requirements into the Consumer Rights Act 2015.

LORD HOLMES OF RICHMOND

After Clause 288, insert the following new Clause –

“Consumer protection: right for consumer to be informed about repairability of goods

In the Consumer Rights Act 2015, after section 10, insert –

“10A Information to be provided on whether goods are repairable

- (1) Traders must provide information before a consumer enters into a contract or makes a purchase about the extent to which the trader’s goods are repairable and have been designed for repairability.
- (2) The information required under subsection (1) must include –
 - (a) whether there are spare parts or repair services available for the goods in question, and if so, how to access them and how much they are likely to cost; and
 - (b) whether the trader provides additional information on how to make repairs to the goods in question and, if so, how to access that information.””

LORD HOLMES OF RICHMOND

After Clause 288, insert the following new Clause –

“Review of consumer protection legislation in relation to artificial intelligence

Within six months of the passing of the Act, the Government must undertake a review of all consumer protection legislation to assess its suitability to address the challenges and opportunities presented by artificial intelligence.”

LORD HOLMES OF RICHMOND

After Clause 288, insert the following new Clause –

“Consumer protection: artificial intelligence labelling

Any person supplying a product or service involving artificial intelligence must give consumers clear and unambiguous information regarding any relevant health warnings and opportunities to give or withhold their informed consent to use of artificial intelligence in advance of consuming any product or service.”

Clause 334

LORD HOLMES OF RICHMOND

Clause 334, page 235, line 4, after “subsections” insert “(1A)”

LORD HOLMES OF RICHMOND

Clause 334, page 235, line 5, at end insert –

- “(1A) Regulations commencing sections 19, 21, 46 and 86 may not be made until the Secretary of State has published guidance on how the appeals standard for financial penalties, proportionality and the countervailing benefits exemptions set out in those sections will operate.”

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