



House of Commons

Business, Energy and Industrial
Strategy Committee

Post-pandemic economic growth: state aid and post-Brexit competition policy

Fourth Report of Session 2022–23

*Report, together with formal minutes relating
to the report*

*Ordered by the House of Commons
to be printed 11 October 2022*

HC 759

Published on 25 October 2022
by authority of the House of Commons

Business, Energy and Industrial Strategy Committee

The Business, Energy and Industrial Strategy Committee is appointed by the House of Commons to examine the expenditure, administration and policy of the Department for Business, Energy and Industrial Strategy.

Current membership

[Tonia Antoniazzi MP](#) (*Labour, Gower*)

[Alan Brown MP](#) (*Scottish National Party, Kilmarnock and Loudoun*)

[Richard Fuller MP](#) (*Conservative, North East Bedfordshire*)

[Ms Nusrat Ghani MP](#) (*Conservative, Wealden*)

[Paul Howell MP](#) (*Conservative, Sedgefield*)

[Mark Jenkinson MP](#) (*Conservative, Workington*)

[Darren Jones MP](#) (*Labour, Bristol North West*) (Chair)

[Andy McDonald MP](#) (*Labour, Middlesbrough*)

[Charlotte Nichols MP](#) (*Labour, Warrington North*)

[Mark Pawsey MP](#) (*Conservative, Rugby*)

[Alexander Stafford MP](#) (*Conservative, Rother Valley*)

Powers

The Committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the internet via www.parliament.uk.

Publication

© Parliamentary Copyright House of Commons 2022. This publication may be reproduced under the terms of the Open Parliament Licence, which is published at www.parliament.uk/site-information/copyright-parliament/.

Committee reports are published on the Committee's website at www.parliament.uk/beis and in print by Order of the House.

Committee staff

The current staff of the Committee are Matthew Chappell (Committee Operations Manager), Kenneth Fox (Clerk), Catherine Kisanji (Committee Specialist), Catherine Meredith (Second Clerk), Ashleigh Morris (Senior Committee Specialist), Lewis Pickett (Committee specialist), Owen Sheppard (Media Officer), Lily Stoker (Committee Specialist), Tim West (Senior Media Officer), Louise Whitley (Senior Committee Specialist) and Sue Wrightman (Committee Operations Officer).

Contacts

All correspondence should be addressed to the Clerk of the Business, Energy and Industrial Strategy Committee, House of Commons, London SW1A 0AA. The telephone number for general enquiries is 020 7219 8586; the Committee's email address is beiscom@parliament.uk.

You can follow the Committee on Twitter using [@CommonsBEIS](https://twitter.com/CommonsBEIS)

Contents

Summary	3
1 Introduction	4
Introduction	4
Our inquiry	4
2 The Competition and Markets Authority	6
The Competition and Markets Authority	6
CMA post-Brexit roles and responsibilities	7
CMA performance	8
The CMA's capacity to fulfil new responsibilities	12
3 Competition and Subsidy Control	15
UK competition policy	15
UK competition law divergence	16
Subsidy Control	17
Trade and Cooperation Agreement (TCA)	18
Subsidy Control Act	18
Subsidy Advice Unit	19
Interim UK subsidy control regime	24
4 Consumer Policy	27
UK consumer law	27
Challenges for UK consumer policy	28
Consumer law enforcement	31
Proposed changes to the CMA's consumer powers	32
Consumer redress	34
5 Digital Markets	37
Post-Brexit digital markets regime	37
CMA digital markets investigations	41
UK digital markets reform	42
Conclusions and recommendations	48
Annex	53
Public survey on consumer rights and protections	53

Formal Minutes	60
Witnesses	61
Published written evidence	62
List of Reports from the Committee during the current Parliament	63

Summary

Since 1 January 2021, following the end of the Transition Period, EU competition law has no longer been enforced in the UK, and the UK and EU now operate separate competition regimes. The UK Government is establishing new competition, consumer rights, and digital markets regimes. This offers a major opportunity: strong competition and consumer law will drive economic growth.

The new UK regimes will lead to a significant expansion in the roles and responsibilities of the Competition and Markets Authority (CMA). Additional powers must be accompanied by additional accountability, and the Committee will step up its oversight of the CMA in 2023. The increase in the CMA's responsibilities and powers is likely to lead to a corresponding increase in its public profile: that is something which the CMA should embrace. We encourage the CMA to be more proactive in explaining to the public how its work has delivered for consumers, both in its annual reporting and its press notices.

Divergence from the EU's competition regime will introduce new compliance costs for UK businesses. We therefore call upon the Competition and Markets Authority to supply the Committee with an assessment of the cost to business of trading in both the EU and the UK, and its impact on competition.

An effective subsidy regime will help deliver on the Government's levelling up policy. The Subsidy Control Act, which is expected to come into force in Autumn 2022, will introduce a new subsidy control regime; but the Government has yet to publish final guidance on various aspects of it. Meanwhile, public authorities seeking to award subsidies (such as from the Shared Prosperity Fund) are in limbo. The Government needs to end this uncertainty by publishing final guidance on the new subsidy control regime without delay.

The Queen's Speech announced a Draft Digital Markets, Competition and Consumer Bill, to promote competition, strengthen consumer rights and protect households and businesses. The Draft Bill is expected to increase the CMA's consumer enforcement powers to tackle consumer detriment and to strengthen the CMA's ability to fine businesses that abuse their market position, by reducing the minimum turnover threshold for immunity from financial penalties from £50 million to £20 million and imposing penalties of up to 10% of global annual turnover where consumer protection laws are broken. We welcome these proposals, but there is as yet no sign of the Draft Bill.

The Draft Bill would also give the Digital Markets Unit, which has been established within the CMA in shadow form and which is working to operationalise the future UK competition regime for digital markets, the enforcement and other powers it needs to fulfil its role. Within digital markets there is strong evidence of abuses of market dominance which warrant intervention. We encourage the CMA to investigate these instances closely and to collaborate internationally to promote further competition between digital firms. Meanwhile, consumers and others are at risk. The Draft Bill should be published without delay.

1 Introduction

Introduction

1. Competition law in the UK aims to limit practices that harm free and fair competition to the detriment of consumers. This includes the main areas of global competition law: abuse of a dominant market position by a firm, anti-competitive agreements between firms, and mergers or takeovers which, if allowed, would result in a substantial lessening of competition.¹

2. The legislative framework for the UK's competition regime is provided by the Competition Act 1998² and the Enterprise Act 2002,³ as amended by the Enterprise and Regulatory Reform Act 2013,⁴ which created the Competition and Markets Authority (CMA). Until the UK's exit from the European Union, the UK's national competition regime operated within the context of the EU-wide competition regime enforced by the European Commission.⁵

3. From 1 January 2021, following the end of the Brexit transition period on 31 December 2020, a number of competition functions and responsibilities, which the European Commission had previously had exclusive jurisdiction of, passed to the CMA as the UK's lead competition and consumer authority.⁶

4. The Government has begun to put in place several new structures to implement the UK's new competition, consumer rights, and digital markets regimes. Chapter 2 looks at the capacity of the Competition and Markets Authority to absorb and carry out effectively the many new responsibilities which it is acquiring, most of them as a consequence of the UK's exit from the EU.

5. Chapter 3 considers the new UK subsidy control regime under the Subsidy Control Act 2022, including the role of the Subsidy Advice Unit.

6. Chapter 4 focuses on consumer rights and proposals to give the CMA enhanced powers to tackle consumer rip-offs and bad business practices. Chapter 5 looks at competition within digital markets—or the lack of it—and whether the dominance of a small number of tech giants or 'big tech' companies is stifling competition, and at the Government's policy response.

Our inquiry

7. We launched our inquiry into state aid and post-Brexit competition policy in September 2021, as the third strand in our Post-Pandemic Economic Growth inquiry.⁷ We did so with the belief that an effective competition, state aid and consumer regime is an important component of government efforts to stimulate economic growth. We

1 House of Commons Library, [The UK competition regime](#), 04814, 25 May 2021, p. 3

2 [Competition Act 1998](#)

3 [Enterprise Act 2002](#)

4 [Enterprise and Regulatory Reform Act 2013 \(ERRA\)](#)

5 House of Commons Library, [The UK competition regime](#), 04814, 25 May 2021, p. 5

6 Competition and Markets Authority, [Annual Plan 2020/21](#), 19 March 2020, p. 1

7 Business, Energy and Industrial Strategy Committee, [State aid and competition policy - Business Committee launch inquiry](#), 23 September 2021

took evidence from prominent state aid and competition lawyers, consumer champions, regulators, consumer bodies and others, including the Rt Hon Lord Tyrie, former Chair of the Competition and Markets Authority, and Paul Scully MP, the then Parliamentary Under Secretary of State (Minister for Small Business, Consumers and Labour Markets).⁸ We also heard from John Penrose MP, following his report *Power to the people: independent report on competition policy*, published on 16 February 2021, which was commissioned by the then Chancellor of the Exchequer and the Secretary of State for Business, Energy and Industrial Strategy.

8. We also conducted an online public survey from 25 January to 10 February 2022 to understand consumers' view of their rights following Brexit and the COVID-19 pandemic.⁹ We received 1,101 responses and used the results of this survey to inform our evidence session on consumer rights and enforcement on 1 March 2022.¹⁰ The results of the survey are included in Annex A to this Report.

9. In February 2022, we visited Brussels to discuss competition in the EU and the impact of Brexit on the relationship between the CMA and the European Commission's Directorate-General for Competition. We met the Commission's Director General for Competition, Olivier Guersent, and Nathalie Loiseau MEP and Seán Kelly MEP, as well as business representatives.

10. In March 2022, we visited the United States to understand US digital markets regulation and met a range of 'big tech' companies as well as smaller competitors and tech industry bodies. We also met Commissioner Rebecca Kelly Slaughter from the Federal Trade Commission and the US Department of Justice, and several members of Congress.

11. In June 2022, we took evidence on consumer law enforcement in the air travel industry in a one-off non-inquiry session following significant disruption at UK airports from April 2022. We questioned representatives of airlines and affiliated industries, consumer groups, and regulators including the Civil Aviation Authority, about consumer detriment caused by mass flight cancellations, delays, and refund issues.

12. We are grateful to all the consumers who participated in our survey, the stakeholders who facilitated our visits in Brussels and the United States, and all those who provided oral and written evidence to our inquiry.

8 A full list of witnesses is attached at the end of the report.

9 Business, Energy and Industrial Strategy Committee, [Business Committee seeks public's views on consumer rights](#), 25 January 2022

10 Business, Energy and Industrial Strategy Committee, [Oral evidence: Post-pandemic economic growth: state aid and post-Brexit competition policy, HC 742](#), 1 March 2022

2 The Competition and Markets Authority

The Competition and Markets Authority

13. The Competition and Markets Authority (CMA) is a non-ministerial Government department established on 1 April 2014 by the Enterprise and Regulatory Reform Act 2013 (ERRA 2013).¹¹ When it was established, the CMA took over the functions of the previous UK Competition Commission and certain consumer functions of the Office of Fair Trading.¹² The CMA is the UK's lead competition and consumer authority and has a statutory duty to promote competition, both within and outside the UK, for the benefit of consumers. The CMA's mission is to make markets work well in the interests of consumers, businesses and the economy, and it works to ensure that consumers get a good deal when buying goods and services, and that businesses operate within the law.¹³

14. The CMA's current functions include:

- Investigating mergers that have the potential to lead to a substantial lessening of competition. If a merger stands to reduce competition, the CMA can block it or impose remedies to address such concerns;
- Conducting studies, investigations or other pieces of work into particular markets where there are suspected competition and consumer problems. The CMA can take action—and recommend action be taken by others—in markets where competition may not be working well;
- Investigating businesses to determine whether they have breached UK competition law and, if so, to end and deter such breaches, including by fining businesses and seeking the disqualification of directors of the companies involved, as well as pursuing individuals who commit the criminal cartel offence;
- Enforcing a range of consumer protection legislation, tackling issues which suggest a systemic market problem, or which affect consumers' ability to make choices;
- Promoting stronger competition in the regulated industries (gas, electricity, water, aviation, rail, communications and health), working with the sector regulators;
- Conducting regulatory appeals and references in relation to price controls, terms of licences or other regulatory arrangements under sector-specific legislation;
- Giving information or advice in respect of matters relating to any of the CMA's functions to the public, policy makers and to Ministers about how they can design and implement policy in a way that harnesses the benefits of competition, and protects and promotes the interests of consumers;

11 Competition and Markets Authority, [Competition impact assessment](#), 15 September 2015, p. 4

12 Competition and Markets Authority, Department for Business, Innovation & Skills, Office of Fair Trading, and Competition Commission, [New competition authority comes into existence](#), 1 October 2013

13 Competition and Markets Authority, [Competition and Markets Authority Annual Plan 2020/21](#), p. 5

- Providing technical advice, reporting and monitoring in relation to the effective operation of the UK internal market; and
 - From Autumn 2022, providing advice, reporting, and monitoring in relation to specific subsidies, and the effective operation of the domestic subsidy regime, and its impact on competition and investment.¹⁴
15. The CMA is responsible for five key areas of the UK’s competition regime:
- Mergers and acquisitions—investigating mergers between organisations, to ensure competition is not reduced
 - Market studies—investigating entire markets for competition or consumer problems
 - Competition enforcement—taking action against businesses and individuals that take part in cartels or anti-competitive behaviour
 - Consumer protection enforcement—protecting consumers from unfair trading practices
 - Advocacy—encouraging Government and other regulators to use competition effectively on behalf of consumers.¹⁵

International collaboration

16. The CMA collaborates with international competition authorities on major issues affecting competition. Dr Coscelli, then Chief Executive of the CMA, outlined to us the CMA’s post-Brexit work on global mergers and antitrust cases alongside the European Commission and American competition agencies.¹⁶ He described the success of this collaboration and told us that the CMA has “very strong relationships”¹⁷ and is in “constant communication” with its international counterparts.¹⁸ The CMA stated in its 2022/23 Annual Plan that it seeks to continue to strengthen its relationships with both national and international partners and agencies and leading developments in competition and consumer policy across the world.¹⁹

17. The CMA has taken steps to strengthen its international relationships. For example, in September 2020, the CMA signed the Multilateral Mutual Assistance and Cooperation Framework with its counterparts in four countries to strengthen cooperation on multi-jurisdictional investigations.²⁰

CMA post-Brexit roles and responsibilities

18. Following the UK’s exit from the European Union, several functions and responsibilities have passed to the CMA as the UK’s lead competition and consumer

14 Competition and Markets Authority, [Competition and Markets Authority Annual Plan 2022/23](#), p. 6–7

15 Competition and Markets Authority, [About us](#)

16 Q108

17 Q118

18 Q135

19 Competition and Markets Authority, [Annual Plan 2022/23](#), 24 March 2022, p. 3

20 Competition and Markets Authority, [Regulating after EU Exit Summary](#), 18 May 2022, p. 9

authority. From 1 January 2021, the CMA took on responsibility from the European Commission for trans-national mergers and cartel cases.²¹ The CMA's role has also expanded in the areas of subsidy control, competition policy and consumer rights enforcement, and digital markets. As well as these added responsibilities, the onset of the COVID-19 pandemic caused the CMA to reorient its activity, which included setting up a COVID-19 Taskforce (described in Chapter 4) to address new problems that arose for consumers and businesses.²²

19. The CMA has acquired other roles and responsibilities, some of them as a direct consequence of the UK's exit from the EU, including:

- Support for the effective operation of the UK internal market, through the establishment of the Office for the Internal Market (OIM) within the CMA;²³
- Advice on aspects of subsidies, through the Subsidy Advice Unit as a committee of the CMA Board (described in Chapter 3); and
- The operation of a pro-competition regime for digital markets, through a Digital Markets Unit, established in 2021 in shadow form (described in Chapter 5).

20. Collectively, these amount to a very substantial extension of the CMA's responsibilities²⁴ and will require an infusion of resources, in terms of both staff and funding, as well as skilled management if the changes to the shape and powers of the CMA are to be embedded effectively.

CMA performance

21. During this inquiry, some witnesses gave an overall assessment of the performance of the CMA. Lord Tyrie, a former Chair of the CMA, told us that the CMA is not performing as well as it should as it has “some fundamental structural weaknesses, which have become much more serious and glaring as the pressure on competition authorities to perform better has grown because of public discontent”.²⁵ Lord Tyrie also discussed governance within the CMA. He told us that the CMA board “is really largely form before substance”, having “delegated too many of the responsibilities that it should assume itself”.²⁶

22. George Peretz KC, Joint Chair for the Joint Working Party of UK Bars and Law Societies on Competition Law, and Joint Convenor for the UK State Aid Law Association, agreed that the CMA requires reform to work faster and more effectively, although he also told us that within the current legal regime “the CMA does pretty well”.²⁷

23. George Peretz's view was supported by the BEIS Department in written evidence. The BEIS Department asserted that since its creation, the CMA has established robust governance arrangements, and “the evidence we have seen suggests they are working

21 Competition and Markets Authority, [Annual Plan 2020/21](#), 19 March 2020, p. 1

22 Competition and Markets Authority, [Annual Report and Accounts 2020/21](#), 15 July 2021, p. 6

23 Competition and Markets Authority and Office for the Internal Market, [Office for the Internal Market opens for business](#), 21 September 2021

24 See for instance Jonathan Scott, former Chair of the CMA, in the CMA's [Annual Report and Accounts 2020/21](#), 15 July 2021, p. 6

25 Q228

26 Q238

27 Q25

well”. The BEIS Department stated that the CMA has already demonstrated that it can manage a range of regulatory tools including competition and consumer enforcement investigations, merger control, market inquiries and regulatory appeals.²⁸

24. Sunil Patel, Chief Data Officer at PwC also told us that the CMA and other UK regulators have been considered to be pro-business and have “a good international standing”, which is “really important in terms of where investors put their money”.²⁹

25. During our visit to Brussels, the European Commission’s Directorate-General for Competition told us that the CMA has a positive reputation in Europe and that post-Brexit cooperation and discussion was positive between the two competition institutions. We also heard about the good working relationship between officials at case team levels.

26. During our visit to the United States, we also discussed with Federal Trade Commissioner Rebecca Kelly Slaughter the CMA’s collaboration with the Federal Trade Commission (FTC). Commissioner Slaughter was complimentary of the CMA and described the positive collaboration between both organisations in direct case collaboration. Commissioner Slaughter also noted that the CMA was pursuing ground-breaking work in the competition arena.

27. Many witnesses and stakeholders that engaged with this inquiry noted the high level of talent and expertise of the staff within the CMA. Lord Tyrie told us that the CMA “is full of very able people, some of the best in the Civil Service”. He noted that there are high-quality members of staff at “the very top; [and] some of them are much lower in the organisation”. Lord Tyrie told us that many of the ideas he put forward for the reform of the CMA, which have been included in the Government’s proposals in its *Reforming competition and consumer policy* consultation (discussed in Chapter 4), originated with the people he worked with in the CMA.³⁰

28. Similarly, John Penrose MP told us that although the CMA needed to be upgraded as an organisation, the individuals that work at the CMA are “very impressive”.³¹ This sentiment was echoed by George Peretz, who told us that the CMA is an impressive organisation in many ways and “has some very good people working for it”.³²

29. In oral evidence, Lord Tyrie told us however that of the five main areas of responsibility, the CMA “is only really fully performing on two of them”: competition enforcement, and mergers and acquisitions.³³ Lord Tyrie stated that although the CMA is being expanded, it has “become fairly clear that it is not acting fully on its existing legislative base”³⁴ and that more could be achieved by the CMA without further legislation by assessing its existing statutory base and being bolder in its implementation.³⁵

30. The CMA is highly regarded by many practitioners and stakeholders, including internationally. In particular, the calibre and expertise of staff has been commended throughout this inquiry. However, we recognise the concerns raised in our inquiry

28 Department for Business, Energy and Industrial Strategy ([SBC0011](#))

29 Q164

30 Q232

31 Q26

32 Q25

33 Q229

34 Q229

35 Q233

about the level of involvement of the CMA Board and the transparency of its decision making. We therefore call on the CMA to engage its Board more proactively in senior decision-making and to publish more detail about its priority areas of work.

31. *In the context of the Government’s stated aim to drive higher economic growth, we believe the CMA could be doing more to help stimulate economic growth in the UK by conducting more market studies in key sectors of the economy and thinking more about the role of competition in driving productivity. We therefore encourage the CMA to consider this part of its remit in deciding on its work priorities and resource allocations going forward.*

Public awareness

32. On 1 July 2021, the Centre for Policy Studies published a report written by Lord Tyrie, a former Chair of the CMA. This report—*The Competition and Markets Authority: a reboot for the 2020s*—set out a number of factors that underlay his suggestions for the immediate reform of the CMA. In his report Lord Tyrie found that two-thirds of businesses did not know that the CMA enforces competition law in the UK, and that two-fifths of businesses had never heard of the CMA. The report also found that one in ten businesses discussed prices with their competitors because they did not know that the practice is illegal.³⁶ Steve Ruddy, Chair of the Board at the Chartered Trading Standards Institute, supported this view and told us that many businesses have “a very poor level of awareness of their responsibilities and consumer rights and responsibilities”.³⁷ Similarly, when discussing digital markets and new powers for the CMA and DMU, Sunil Patel, Chief Data Officer at PwC, told us that most investors “are not really aware of these developments” and will only become aware of these changes when they are legislated and implemented.³⁸

33. Lord Tyrie’s *The Competition and Markets Authority: a reboot for the 2020s* report also stated that the very low levels of public awareness of the CMA, as well as its “facelessness”—the absence of visible leadership—pose particular problems for the CMA’s legitimacy and make it an easy target for attack.³⁹ Lord Tyrie expressed his concern that the CMA’s effectiveness would be eroded without urgent and immediate reform. He said that the CMA’s relative invisibility currently undermines its capacity to deter uncompetitive and unfair trading, and that consumers and the economy were both therefore experiencing the consequences.⁴⁰

34. Lord Tyrie reiterated his point in oral evidence when he told us that “visible public leadership that can exercise soft power” would improve the CMA’s ability to secure a substantial improvement in conduct from businesses breaking competition rules.⁴¹ He told us that:

36 Centre for Policy Studies, [The Competition and Markets Authority: a reboot for the 2020s](#), 1 July 2021

37 Q170

38 Q143

39 Centre for Policy Studies, The Rt Hon Lord Andrew Tyrie, [The Competition and Markets Authority: a reboot for the 2020s](#), 1 July 2021, p.8

40 Centre for Policy Studies, [The Competition and Markets Authority: a reboot for the 2020s](#), 1 July 2021

41 Q237

What is also needed as a result of the digital work, if it is to be a success, is for the public to become aware that this is taking place. They should know that someone is on their side, trying to make sure that these platforms are not going to be allowed to rip them off.⁴²

35. Lord Tyrie also told us that many big businesses see fines that might be levied against them for breaking competition rules as a regular business cost as the fines are currently too small.⁴³ He noted that the consumer “has to start to believe that the economy is run for them and not just for a small elite economic group or for businesses”.⁴⁴

36. In response to Lord Tyrie’s oral evidence, Paul Scully MP, then a BEIS Minister, told us that he was “not sure” whether it was a problem that two-fifths of businesses have never heard of the CMA as it could be a “good thing or a bad thing”. The Minister said that an argument could be made, especially for microbusinesses, that two out of five businesses have no reason to be concerned about competition.⁴⁵ He expressed that he would “hope and expect” that businesses understand that colluding with their competitors or operating as a cartel is against the law.⁴⁶ The Minister also said that businesses should fear an investigation by the CMA if they were breaking competition rules.⁴⁷

Accountability

37. The accountability of the CMA has been raised throughout this inquiry. Lord Tyrie told us that there has not previously been enough Parliamentary scrutiny of competition authorities.⁴⁸ He asserted that there needs to be much more challenge of the key regulators than is currently provided and said that Parliamentary scrutiny such as pre-appointment hearings for the Government’s preferred candidate for roles such as Chair of the CMA “puts regulators on their mettle”.⁴⁹

38. Niall Mackenzie, Director, Consumers and Competition at BEIS, who gave oral evidence alongside the Minister, did not agree with the proposition that the CMA is not properly functioning and is not sufficiently being held to account. Mr Mackenzie stated that the relationships that the Government, the Minister, the Secretary of State, and officials have with the CMA are robust and asserted that the CMA is independent.⁵⁰ He also told us that if an accountability gap exists for the CMA, it is more a concern about whether parliamentary committees are summoning them frequently enough to give evidence. He told us that he is “not quite clear where the [accountability] gap is”.⁵¹

39. The CMA is generally well regarded domestically. However, awareness of its work appears to be low in the UK, both amongst the public and amongst businesses. We agree that awareness of the CMA’s work and the value which it adds is necessary if it

42 Q244
 43 Q238
 44 Q244
 45 Q287
 46 Q288
 47 Q289
 48 Q228
 49 Q235
 50 Q271
 51 Q272

is to have credibility. *We encourage the CMA to be more proactive in explaining to the public how its work has delivered for consumers, both in its annual reporting and its press notices.*

40. *The increase in the CMA's responsibilities and powers is likely to lead to a corresponding increase in its public profile, as businesses and public authorities start to engage with it, or engage more frequently. We believe that would be beneficial and should be embraced by the CMA. We will play a part in increasing accountability of the CMA through enhanced, more regular scrutiny, challenging it when we think necessary.*

41. **Whilst we support the increase in powers for the CMA, we also share the concern that there is insufficient oversight of the CMA and its performance. Additional powers must therefore come with additional accountability. This Committee will be undertaking more work on parliamentary oversight of the CMA, and other regulators, in 2023. In the interim, we require the CMA to proactively report to this Committee on an ongoing basis.**

The CMA's capacity to fulfil new responsibilities

42. The CMA's ability to effectively implement the UK's competition regime following the expansion of its roles and responsibilities has also been raised during this inquiry. In written evidence, the Society of Motor Manufacturers and Traders (SMMT) told us that the scope and scale of the CMA needs to be balanced, appropriate, and sufficient to deliver its work. The SMMT stated that by expanding the CMA's functions, units, and role, "there risks clarity, complexity and quality in its delivery and functioning" and the CMA's independence must be both real and perceived to maintain its full effectiveness.⁵²

43. Dr Andrea Coscelli CBE, former Chief Executive of the CMA, told us that the sequential nature of the CMA's expanded roles and responsibilities helped the operational success of its expansion as it first took on merger and antitrust cases, then worked on a number of global mergers and global antitrust cases with the European Commission and American agencies, then set up the Office for the Internal Market and created the Digital Markets Unit in shadow form. The CMA is also in the process of setting up the Subsidy Advice Unit. Dr Coscelli noted that "we [the CMA] are quite happy with the way things have played out so far".⁵³

CMA staff and resources

44. One consequence of the CMA's expanded role is a need to increase staff capacity. During this inquiry, we also explored the role that CMA staff play in its effectiveness. Dr Coscelli explained to us that when he began the role in 2016, the CMA had around 620 staff and that by February 2022, it had grown to around 900. Dr Coscelli noted that the CMA is projected to grow to more than 1,000 when all its post-Brexit functions come into force.⁵⁴

45. In written evidence, the consumer champion organisation Which? explained that more consideration should be given to whether the CMA will require additional resources

52 The Society of Motor Manufacturers and Traders ([SBC0012](#)), para 9

53 Q108

54 Q108

to manage its increased workload and additional technical challenges that will arise from the expansion of its post-Brexit caseload. Which? stated that “simply redeploying existing resources is unlikely to be enough to deliver meaningful change”.⁵⁵ George Peretz also described “resource issues” at the CMA. He told us that the CMA is aware of the expertise it needs and knows how to operate the UK’s competition regime as effectively as it can within its existing resourcing constraints.⁵⁶

46. In written evidence, the BEIS Department, which is the CMA’s sponsoring Government department, stated that it recognises the importance of a well-resourced and effective competition authority for the health of the UK economy. It told us that the CMA had therefore received significant additional funding to manage its enhanced responsibilities.⁵⁷ Dr Andrea Coscelli supported this and told us that the funding from Government has been “absolutely adequate”, and that the CMA is “happy” with the funding it has received following a three-year spending review.⁵⁸

47. In its 2022/23 Annual Plan, the CMA set out its funding arrangements. The Spending Review 2021 (SR21) allocated the CMA’s budget for 2022/23 as a Resource Departmental Expenditure Limit (RDEL) budget (excluding depreciation) of £112.5 million and a Capital budget of £9.5 million. This settlement continues to include funding in support of the CMA’s existing functions as well as funding for the newly formed Subsidy Advice Unit and Office for the Internal Market.⁵⁹

48. These figures increased from previous spending rounds. The 2019 Spending Round (SR19) allocated the CMA an RDEL budget excluding depreciation for 2020/21 of £91.78 million and a Capital budget of £1.0 million.⁶⁰ The CMA’s RDEL allocated budget excluding depreciation was increased the following year for 2021/22 and was set at £109.6 million with a Capital budget of £7.5 million.⁶¹

49. The CMA has also received ongoing RDEL financial support for a dedicated Digital Markets Unit and an additional £1.1 million in 2022/23 to further support its continued expansion in anticipation of the introduction of a Digital Competition Bill. Additional RDEL funding of £1 million, to fund the CMA’s growth across the nations and regions of the UK, and £2.4 million for emerging pressures (such as inflation and increases to National Insurance Contributions) has also been provided to the CMA in 2022/23.⁶²

50. Dr Coscelli explained to us that although funding levels for the CMA were adequate for its post-Brexit role, the CMA has struggled to recruit new talent as it expands its offices throughout the UK. Dr Coscelli set out that “the issue [...] is in converting the cash into people”.⁶³

51. On 18 May 2022, the National Audit Office (NAO) published a report on the new roles of UK regulators that have taken on significant new responsibilities following the UK’s

55 Which? ([SBC0004](#))

56 Q25

57 Department for Business, Energy and Industrial Strategy ([SBC0011](#))

58 Q109

59 Competition and Markets Authority, [Annual Plan 2022/23](#), 24 March 2022, p. 31 para 4.1–4.2

60 Competition and Markets Authority, [Annual Plan 2020/21](#), 19 March 2020, p. 20 para 4.1

61 Competition and Markets Authority, [Annual Plan 2021/22](#), 23 March 2021, p. 29 para 4.1

62 Competition and Markets Authority, [Annual Plan 2022/23](#), 24 March 2022, p. 31 para 4.3

63 Q109

exit from the EU, including the CMA.⁶⁴ The NAO stated that the CMA used its previous additional EU Exit funding, which in 2020–21 was £19.7 million in 2021–22 prices, as an indicator for future resource needs to support its new responsibilities and workload. The NAO found that the CMA has long-standing challenges to recruit the specialist skills they need in some key areas. In particular, the CMA struggles to compete with the private sector when recruiting and retaining staff with legal, economic, and digital skills for its competition and mergers work. In March 2022, it had a vacancy rate of 25% for legal roles.⁶⁵ Dr Coscelli reiterated this in oral evidence describing that the CMA is “constantly fighting for talent”.⁶⁶

52. Dr Coscelli also explained the difficulties of CMA recruitment in the areas of mergers, antitrust, and digital as “it is a bit tougher” because there is significant mergers and acquisitions activity, and therefore salaries for lawyers have increased “very significantly”. However, he also told us that the CMA has been “reasonably successful” in its expansion but that there could be risks for the CMA in its recruitment going forward if the CMA does not remain competitive.⁶⁷

53. Paul Scully MP, who gave oral evidence in his capacity as BEIS Minister, also noted resource issues at the CMA. He told us that the Government will ensure that the CMA is well-resourced for its extra duties, stating that it is “important that we do resource them right”. The Minister explained that the recruitment of a new CMA Chair was underway, followed by the recruitment of a Chief Executive. He stated that the new leadership at the CMA will set the tone for its capacity issues and make sure that each area is adequately resourced.⁶⁸ We held a pre-appointment hearing for the role of Chair of the CMA on 28 June 2022 with the Government’s preferred candidate, Marcus Bokkerink.⁶⁹ The Secretary of State confirmed Mr Bokkerink’s appointment on 4 July 2022. Mr Bokkerink formally began his post as Chair of the CMA on 7 September 2022.⁷⁰

54. We are encouraged to learn that the CMA is satisfied that it has received adequate resources to deliver its post-Brexit responsibilities, and that it appears to have made a good start in achieving its aims. However, the incoming Chair and Chief Executive will face major challenges in managing its expansion and in the recruitment of staff in specialist fields, on which the CMA depends heavily. We look to support the CMA in its efforts to carry out its new responsibilities.

64 Competition and Markets Authority, [Regulating after EU Exit](#), 18 May 2022

65 Competition and Markets Authority, [Regulating after EU Exit Summary](#), 18 May 2022, p. 8

66 Q109

67 Q109

68 Q263

69 Business, Energy and Industrial Strategy Committee, [Oral evidence: Pre-appointment hearing with the Government’s preferred candidate for the chair of the CMA](#), HC 523, 28 June 2022

70 Business, Energy and Industrial Strategy Committee, [Letter from the Secretary of State relating to the appointment of the CMA Chair](#), Dated 4 July 2022

3 Competition and Subsidy Control

UK competition policy

55. Competition law in the UK aims to limit practices that harm free and fair competition to the detriment of consumers. This includes the abuse of a dominant market position by a firm, anti-competitive agreements between firms, and mergers or takeovers which, if allowed, would result in a substantial lessening of competition.⁷¹

56. The promotion of competition in the UK increased during the 1980s and 1990s, when the UK Government used the privatisation of several previously state-owned monopolies such as water, gas, and electricity as a tool to promote better competition in key markets.⁷² The legislative framework for the UK competition regime was further established by the Competition Act 1998⁷³ and the Enterprise Act 2002.⁷⁴ The regime was developed further by subsequent UK Governments, with a significant set of reforms in 2014 through the Enterprise and Regulatory Reform Act 2013 (ERRA)⁷⁵ which created the Competition & Markets Authority (CMA).

57. The modern prohibitions in UK law on abusing dominant market positions and anti-competitive agreements were set out in the Competition Act 1998 and were based on, and underpinned by, equivalent provisions in EU law. However, following the end of the transition period on 31 December 2020, under the terms of the Trade and Cooperation Agreement (TCA), EU competition law is no longer enforced in the UK, and the UK and EU now operate separate competition regimes.⁷⁶

58. Since 1 January 2021, primary responsibility for enforcing the UK's competition regime now lies with the independent competition authority, the CMA. The Government itself has limited powers to intervene in either the assessment of mergers or the investigation of markets, beyond the National Security and Investment Act 2021.⁷⁷

59. Competition benefits consumers, businesses, and the wider economy in a number of ways. It helps to ensure that people get a greater choice of products which are of better quality and at lower prices. Competition rewards businesses which invest in the development of new and improved products to meet consumers' needs. Therefore, competition encourages businesses to seek more cost-effective ways of making and selling goods and services, and in turn boosting productivity, innovation, and sustainable economic growth.⁷⁸

60. John Penrose MP, former UK Anti-Corruption Champion, highlighted the importance of having a well-regarded and high-quality competition framework and institutions. He told us that a high-quality set of competition institutions delivers a more

71 House of Commons Library, [The UK competition regime](#), 04814, 25 May 2021, p. 3

72 Department for Business, Energy and Industrial Strategy, [Competition law review: post implementation review of statutory changes in the Enterprise and Regulatory Reform Act 2013](#), July 2019, p. 42

73 [Competition Act 1998](#)

74 [Enterprise Act 2002](#)

75 [Enterprise and Regulatory Reform Act 2013](#)

76 House of Commons Library, [The UK competition regime](#), 04814, 25 May 2021, p. 3

77 House of Commons Library, [The UK competition regime](#), 04814, 25 May 2021, p. 3

78 Competition and Markets Authority, [Competition and Markets Authority Annual Plan 2022/23](#), p. 11

competitive economy, which will deliver quicker economic growth. He also noted that the UK's long-term productivity problem and levelling up agenda could be improved through better competition.⁷⁹

61. In its 2022 *State of UK Competition* report, the CMA detailed several factors which have impacted competition and productivity in the UK. The COVID-19 pandemic, the UK's exit from the EU, disruption to supply chains and shipping, and rising energy costs have all been cited as having an impact on the UK economy in recent years. The CMA therefore asserted that “in such circumstances it is more important than ever that competitive intensity across the economy is monitored and supported”.⁸⁰

62. The 2022 *State of UK Competition* report also set out the importance of strong competition for consumers. The report stated that weak competition is experienced by consumers in the form of fewer suppliers, higher prices, lower quality, and less innovation. In turn, this raises the cost of living which can be most detrimental to households on the lowest incomes.⁸¹

63. The CMA also set out the importance of competition for businesses. It stated that when competition is weak, businesses pay more than they should to their suppliers. Similarly, when markets are dominated by a small number of powerful firms, they can use their position to prevent other businesses from entering the market and growing. Both factors lead to higher prices for customers of those businesses, which in turn has an impact on consumers.⁸²

64. John Penrose MP supported this argument. He told us that “if you have a competitive economy, it means lower prices and better products for all of us. There is no point in having competition unless you do it for the benefit of consumers, rather than producers or monopolists”.⁸³

65. The Rt Hon Lord Tyrie, Chair of the CMA between 2018 and 2020, has also argued that in the short term during the pandemic, competition policy had a crucial role to play, both in protecting consumers from exploitative practices, and in ensuring that enforcement did not stand in the way of necessary business co-operation.⁸⁴ Lord Tyrie argued that in the longer term, the pandemic is likely to cause enduring changes to consumer behaviour, businesses, supply chains and the regulatory environment. These changes may aggravate already rising market concentration, the growing power of digital markets and deepening public distrust of markets, which are likely to create a number of major challenges for competition policy.⁸⁵

UK competition law divergence

66. As the UK is no longer part of the EU's competition regime, UK courts are no longer required to follow EU competition law. Therefore, over time UK competition law may diverge from that of the EU.⁸⁶

79 Q6

80 Competition and Markets Authority, [The State of UK Competition](#), 29 April 2022, p. 4

81 Competition and Markets Authority, [The State of UK Competition](#), 29 April 2022, p. 4

82 Competition and Markets Authority, [The State of UK Competition](#), 29 April 2022, p. 4

83 Q7

84 Competition and Markets Authority, [How should competition policy react to coronavirus?](#), 21 July 2020

85 Competition and Markets Authority, [How should competition policy react to coronavirus?](#), 21 July 2020

86 House of Commons Library, [The UK competition regime](#), 04814, 25 May 2021, p. 13

67. George Peretz KC, Joint Chair for the Joint Working Party of UK Bars and Law Societies on Competition Law, and Joint Convenor for the UK State Aid Law Association, discussed possible UK divergence from EU competition law and told us that “at the moment, in the way the Competition Act has been amended, the default position is probably that we stay [in line] with the EU.”⁸⁷ Mr Peretz also told us that divergence is more likely in areas such as distribution rules, where the EU may be concerned with avoiding barriers within the internal market. For example, the EU may look with disapproval on distribution practices which allocate exclusive territories to particular retailers or dealers. However, the UK does not hold the same concerns as the EU in this regard so may choose to diverge in the future. Mr Peretz added that divergence is difficult to predict.⁸⁸

68. George Peretz also outlined the cost of UK divergence, for businesses that trade in both the UK and the EU. He highlighted that businesses will have to take advice about two separate competition regimes, which will require businesses to consider and adhere to two sets of rules and pay two sets of lawyers’ fees when seeking legal advice.⁸⁹

Subsidy Control

69. Before exiting the EU, the UK followed the EU’s state aid regime, which governed the awarding of subsidies such as grants, loans, and guarantees. Under the EU system, all subsidies except those under a ‘Block Exemption Regulation’ had to undergo a process of being notified to, and approved by, the European Commission.⁹⁰ State aid, or subsidy control—the term now used by the UK Government—became a contentious area during the negotiations over the UK’s future relationship with the EU, and was one of the last issues to be resolved.⁹¹

70. As an EU Member State, the UK was part of the EU state aid regime that limits trade-distorting public financial support to businesses. The EU state aid regime is aimed at creating a level playing field for businesses in the EU’s Single Market. Under Article 107 of the Treaty on the Functioning of the European Union, state aid is prohibited if it threatens to distort competition and trade between EU Member States. Member States are required to get European Commission clearance before making state aid available to businesses (ex-ante assessment). In practice, about 95% of EU state aid measures have been exempted from this procedure as the General Block Exemption Regulation declares specific categories of state aid compatible with the Treaty and exempts these categories from the requirement of prior notification and approval. The Commission or courts can order recovery of state aid that is unlawful or deemed incompatible with the internal market.⁹²

87 Q3–4

88 Q4

89 Q3

90 Department for Business, Energy and Industrial Strategy, The Rt Hon Kwasi Kwarteng MP, and Paul Scully MP, [New subsidy system to support UK jobs and businesses, boost the economy and strengthen the union](#), 30 June 2021

91 House of Commons Library, [Subsidy Control Bill 2021–22](#), 17 September 2021, p. 12

92 House of Commons Library, [Subsidy Control Bill 2021–22](#), 17 September 2021, p. 11; European Commission, [State aid: Commission widens scope of the General Block Exemption Regulation – frequently asked questions](#), 17 May 2017

Trade and Cooperation Agreement (TCA)

71. Both the EU and UK have a mutual interest in robust controls of state support to businesses, which ensures fair competition and trade with the other party. An agreement on subsidy control was reached and included in the UK-EU Trade and Cooperation Agreement (TCA). Under the TCA, both the UK and EU were required to have an effective system of subsidy control and an independent body to oversee it from 1 January 2021.⁹³ The benefits of a subsidy must outweigh any negative impact on competition and investment in the UK and internationally.⁹⁴ A distinct feature of the TCA is that one of the parties can take unilateral remedial measures such as raising tariffs, if there is evidence that a subsidy of the other party risks having a “significant negative effect” on UK-EU trade and investment.⁹⁵

72. The TCA provisions on subsidies do not amend the state aid provisions of the Withdrawal Agreement Protocol on Ireland and Northern Ireland. This means that EU state aid rules continue to apply to subsidies affecting trade in goods and wholesale electricity between Northern Ireland and the EU.⁹⁶

73. *Additional compliance costs will be incurred by businesses that trade in both the EU and the UK, assuming some degree of regulatory divergence over time. We therefore call on the CMA to conduct a short economic analysis, to be sent to this Committee no later than September 2024, assessing the cost to business of trading in both the EU and the UK and its impact on competition.*

Subsidy Control Act

74. On 30 June 2021, the Government announced a new UK subsidy control regime and presented a Subsidy Control Bill to Parliament.⁹⁷ The new UK system will start from the basis that subsidies are permitted if they follow UK-wide principles. The aim of this system is to deliver good value for the taxpayer while awarding subsidies in a timely and effective way.⁹⁸

75. Whereas the EU state aid framework centralises the review of subsidies by the European Commission, the UK national government does not have to approve UK subsidies:⁹⁹ the Subsidy Control Act establishes a legal framework that allows UK local authorities, public bodies and the Scottish, Welsh, and in some cases the Northern Irish devolved administrations, to award subsidies. Subsidy-granting public authorities will have to assess whether subsidies comply with the seven subsidy control principles, a mechanism that differs from the one used by the European Commission for subsidy approval.

93 House of Commons Library, [Subsidy Control Bill 2021–22](#), 17 September 2021, p. 12

94 [Trade and Cooperation Agreement](#), Chapter 3, Articles 363 to 375

95 House of Commons Library, [Subsidy Control Bill 2021–22](#), 17 September 2021, p. 13

96 House of Commons Library, [Subsidy Control Bill 2021–22](#), 17 September 2021, p. 12

97 House of Commons Library, [Subsidy Control Bill 2021–22](#), 17 September 2021, p. 5

98 Department for Business, Energy and Industrial Strategy, The Rt Hon Kwasi Kwarteng MP, and Paul Scully MP, [New subsidy system to support UK jobs and businesses, boost the economy and strengthen the union](#), 30 June 2021

99 Wolters Kluwer, [A New UK Subsidy Control System](#), 5 August 2022

76. The Subsidy Control Bill received Royal Assent on 28 April 2022 and put a UK state aid regime into law.¹⁰⁰ The Act creates a legal framework and sets out conditions for public authorities that provide subsidies to businesses.¹⁰¹ The main provisions of the Act are expected to come into force in Autumn 2022.¹⁰²

77. During this inquiry a number of concerns were raised about the Bill. James Webber, Antitrust Partner at multinational law firm Shearman & Sterling LLP, told us that public authorities have become used to the EU’s state aid regime that was “very prescriptive” in the granting of subsidies. Mr Webber told us that moving to a new regime that is not prescriptive is disorientating and “we are feeling the effects of that disorientation”.¹⁰³ Mr Webber told us that once elements of the Subsidy Control Act are defined, such as subsidies of particular interest (those that are considered to have the highest risk of causing harmful distortion), “lots of those issues of insecurity that public authorities are reporting should all drop away”.¹⁰⁴

Subsidy Advice Unit

78. Section 68 of the Subsidy Control Act establishes a Subsidy Advice Unit (SAU) within the CMA. The SAU will be a new committee of the CMA Board.¹⁰⁵ The SAU will have an advisory role in relation to certain subsidies given by public authorities, including devolved Scottish, Welsh and Northern Irish Governments and local authorities. Its advice will be non-binding and the ultimate decision to grant a subsidy will rest with a public authority. The SAU will also monitor and oversee the working of the regime.¹⁰⁶

79. Under sections 52 to 55 of the Subsidy Control Act, subsidies and schemes ‘of particular interest’—those that are considered to have the highest risk of causing harmful distortion—are subject to a mandatory referral to the SAU before they are granted by the relevant authority. Subsidies or schemes ‘of interest’ may also be referred to the SAU voluntarily. Under section 57, the SAU may decide whether to review subsidies of interest which are voluntarily referred. In both instances, the SAU has a reporting period of 30 working days in which it is required to draft a non-binding report.¹⁰⁷ Subsidies or schemes which do not meet the ‘of particular interest’ or ‘of interest’ thresholds will not require further referral.¹⁰⁸ Section 55 of the Subsidy Control Act gives the Secretary of State the power to issue a direction asking a public authority to refer a subsidy or scheme to the SAU to provide a report before it is granted.¹⁰⁹

100 [Subsidy Control Act 2022](#)

101 House of Commons Library, [Subsidy Control Bill 2021–22](#), 17 September 2021, p. 5

102 Department for Business, Energy and Industrial Strategy, [Consultation on the guidance for the Subsidy Control Act 2022](#), July 2022, para 4

103 Q100

104 Q100

105 [Subsidy Control Act 2022](#), Chapter 3 section 68

106 Competition and Markets Authority, [Digital Markets Unit](#), Published 7 July 2021

107 [Subsidy Control Act 2022](#), sections 52–57

108 Shoosmiths, Jennifer Clarke, [Subsidy Control Act 2022: What’s new for public and private sector](#), 26 May 2022

109 [Subsidy Control Act 2022](#), section 55

80. The Competition Appeal Tribunal (CAT), a specialist independent judicial body which hears and decides cases involving competition or economic regulatory issues,¹¹⁰ will handle requests for judicial review of subsidy decisions by interested parties. Interested parties have one month to apply to the CAT to review the subsidy decision.¹¹¹

81. Nicole Robins, Partner at economics and finance consultancy Oxera, told us that the non-binding advisory role of the SAU “will be sufficient in the majority of instances” to tackle the challenges of the new subsidy control regime. She told us that the CMA “is very well placed” to oversee the UK’s subsidy control regime.¹¹²

82. Isabel Taylor, Partner at international law firm Slaughter and May, also told us that “in practice, there would be a strong moral authority to the findings of the CMA”.¹¹³ She told us that:

[...] it is quite unlikely that we would see a large number of adverse CMA reports. If the regime that is designed in the Bill works properly, what you should see is that the dialogue with the CMA is a tool that gets to an outcome that achieves what people want to do in a way that is subsidy-compliant.¹¹⁴

83. Both Nicole Robins and James Webber, Antitrust Partner at multinational law firm Shearman & Sterling LLP, highlighted that it is unlikely that a public authority would go against the decision of the CMA. However, Nicole Robins stated that for subsidies of particular interest that are most distortive to competition, an argument could be made for the CMA’s role to be binding.¹¹⁵

84. We believe that the non-binding nature of the CMA’s role when advising on subsidies which are referred to its Subsidy Advice Unit will be sufficient in the majority of cases. The Government should ensure that the CMA has the resources necessary for the Subsidy Advice Unit to advise public authorities effectively, in a timely fashion and so as to avoid any misuse of subsidy funding.

Subsidies of interest and subsidies of particular interest

85. Isabel Taylor, Partner at Slaughter and May, noted that from a practitioner’s perspective, there were elements missing from the Subsidy Control Bill. In particular, she noted the lack of specific definitions for subsidies and schemes of interest (SSoI) and subsidies and schemes of particular interest (SSoPI).¹¹⁶ She explained that:

Where you draw those lines makes a big difference to what you think the future role of the CMA is going to be. In terms of trying to explain how the regime works for people, it is quite odd. Even if it is a non-exhaustive list, not being able to give any idea of where these lines are drawn at this stage in the process is a little bit challenging.¹¹⁷

110 Competition Appeal Tribunal, [About the Tribunal](#)

111 [Subsidy Control Act 2022](#), sections 70–71

112 Q88

113 Q88

114 Q88

115 Q86

116 Q107

117 Q107

86. On 25 March 2022, following the session in which Isabel Taylor appeared, the BEIS Department published a consultation on *Subsidies and Schemes of Interest and of Particular Interest*. The consultation aimed to develop clear and easy criteria for public authorities to interpret and apply in the granting of subsidies, and it sought views from stakeholders on the two categories of subsidies and schemes. The consultation also set out the Government's intended approach to setting criteria and definitions in the consultation's accompanying draft regulations and included initial proposals for related guidance for public authorities.¹¹⁸ The consultation closed on 6 May 2022.¹¹⁹

87. On 24 August 2022, the BEIS Department published its response to the *Subsidies and Schemes of Interest and of Particular Interest consultation*.¹²⁰ The consultation set out the criteria and thresholds that will determine whether a subsidy or scheme is “of Interest” or “of Particular Interest”:

- Subsidies given outside of sensitive sectors are Subsidies of Particular Interest if they are over £10m, or cumulate above this threshold.
- All other subsidies of between £5 to £10m, or which cumulate to such a value, that do not meet the Subsidy of Particular Interest criteria, are Subsidies of Interest.
- Subsidies given in sensitive sectors will be Subsidies of Particular Interest if they are over £5m, or cumulate above this threshold.
- Where subsidies cumulate above the SSoPI threshold, there will be a minimal value for referral of £1m. Public authorities will only be required to make a mandatory referral if the subsidy in question exceeds £1m.
- All restructuring subsidies will be Subsidies of Particular Interest.
- All rescue subsidies will be Subsidies of Interest.
- Subsidies that are explicitly conditional on relocation and meet the conditions set out for an exemption from the general prohibition in section 18 of the Act will be treated as Subsidies of Interest below a value of £1m, and Subsidies of Particular Interest above that value.
- Regarding subsidy schemes, if the parameters of a scheme allow a subsidy award to be given under that scheme that meets the definition of a Subsidy of Particular Interest, then that scheme will be defined as a Scheme of Particular Interest. Similarly, a scheme which would allow a subsidy award of a Subsidy of Interest is defined as a Scheme of Interest (unless it is already a Scheme of Particular Interest). Referral to the SAU will take place at scheme level, when the scheme is made.¹²¹

118 Department for Business, Energy and Industrial Strategy, [Subsidies and Schemes of Interest and of Particular Interest Consultation](#), Published 25 March 2022

119 Department for Business, Energy and Industrial Strategy, [Consultation on subsidies and schemes of interest and of particular interest: Subsidy Control Bill](#), 25 March 2022

120 Department for Business, Energy and Industrial Strategy, [Consultation outcome: Subsidies and Schemes of Interest and of Particular Interest](#), 24 August 2022

121 Department for Business, Energy and Industrial Strategy, [Subsidies and Schemes of Interest and of Particular Interest: government response](#), 24 August 2022, para 123–124

88. The Government has proposed that subsidies which concern sensitive sectors should be subject to a lower SSoPI threshold of £5m. These sensitive sectors are:

- Manufacture of basic iron and steel and of ferro-alloys
- Aluminium production
- Copper production
- Manufacture of motor vehicles
- Building of ships and floating structures
- Manufacture of motorcycles
- Manufacture of air and spacecraft and related machinery
- Production of electricity.¹²²

89. The consultation stated that the Government will finalise and lay draft regulations before Parliament which reflect the outcome of the consultation. These regulations will be subject to the affirmative procedure. The consultation response also set out that the main changes to the draft regulations published alongside the consultation will be:

- the introduction of a minimum value of £1m for referral of cumulated subsidies to the SAU, to avoid small subsidies that are above the cumulated threshold being subject to referral (see section on cumulation rules);
- the definition of relocation subsidies of £1m or more as Subsidies of Particular Interest and those below £1m as Subsidies of Interest due to the higher risk that they present of distorting competition and causing harm (see section on subsidies conditional on relocation) and
- special provisions for the valuation and cumulation of tax schemes and subsidies (see section on cumulation and valuation of tax subsidies and schemes).¹²³

90. The Government will publish detailed guidance setting out (for instance) the characteristics of SSoI design features prior to the commencement of the regime.¹²⁴ The consultation stated that the draft guidance will set out an accessible framework for public authorities to follow in determining what constitutes a subsidy.¹²⁵

122 Department for Business, Energy and Industrial Strategy, [Subsidies and Schemes of Interest and of Particular Interest: government response](#), 24 August 2022, para 50

123 Department for Business, Energy and Industrial Strategy, [Subsidies and Schemes of Interest and of Particular Interest: government response](#), 24 August 2022, para 127. References to sections are to sections of the consultation.

124 Department for Business, Energy and Industrial Strategy, [Subsidies and Schemes of Interest and of Particular Interest: government response](#), 24 August 2022, para 98

125 Department for Business, Energy and Industrial Strategy, [Subsidies and Schemes of Interest and of Particular Interest: government response](#), 24 August 2022, para 110

Further guidance for public authorities

91. The BEIS Department published illustrative guidance on the practical operation of the subsidy control principles on 25 January 2022.¹²⁶ The document contained guidance for public authorities to help them interpret the subsidy control principles and other requirements in the Subsidy Control Act 2022. This guidance was described by legal experts Angelica Hymers and Alex Kynoch as “requir[ing] significant development before they can be used by granting authorities”.¹²⁷

92. The BEIS Department subsequently published Draft Statutory Guidance on the Subsidy Control Act 2022 on 1 July 2022, alongside a consultation which sought views on its form and content, so as to inform the final version that will be published ahead of implementation of the regime. The consultation ended on 10 August 2022.¹²⁸

93. The draft guidance explains the legal obligations on public authorities under the subsidy control regime and provides a framework for designing and awarding subsidies in a way which is consistent with the Subsidy Control Act 2022. It sets out that the guidance is designed to help public authorities award subsidies in a way which minimises any negative impacts to competition and investment, as well as promoting the effective and efficient use of public money. It also states that public authorities are expected to consult and refer to the guidance as part of their decision-making on the granting of subsidies, however, the guidance is not intended to be exhaustive. The document sets out that public authorities should also seek their own expert legal advice if, and where, they are unsure of their legal obligations or the lawfulness of a proposed subsidy.¹²⁹ Sections of the draft guidance have also been omitted or caveated where policy is subject to further detail in regulations.¹³⁰

UK Shared Prosperity Fund

94. The UK Shared Prosperity Fund (UKSPF) is a government-allocated fund intended to reduce inequalities between communities, as part of the Government’s wider “levelling up” agenda. This Fund was first announced in 2017 and launched with the publication of its full prospectus on 13 April 2022.¹³¹ The UKSPF was intended to replace EU structural funds—EU funding designed to support economic development and reduce inequality between and within countries across Europe.¹³²

95. The UKSPF prospectus states that it will provide £2.6 billion of new funding for local investment by March 2025, with all areas of the UK receiving an allocation from the Fund via a funding formula rather than a competition.¹³³ UKSPF funding is confirmed for three financial years—£400 million for 2022–23, £700 million for 2023–24 and £1.5 billion for 2024–25. The UKSPF allocation of £1.5 billion per year is lower than the £2 billion per

126 Department for Business, Energy and Industrial Strategy, [Subsidy Control Bill 2021: illustrative regulations, guidance and streamlined routes](#), 25 January 2022

127 UK State Aid Law Association, [Subsidy Control Bill – Illustrative Guidance and Regulations \(by Angelica Hymers and Alex Kynoch of Browne Jacobson\)](#), 25 March 2022

128 Department for Business, Energy and Industrial Strategy, [Statutory guidance on the Subsidy Control Act 2022](#), 1 July 2022

129 Department for Business, Energy and Industrial Strategy, [Draft Statutory Guidance on the United Kingdom Subsidy Control Regime Subsidy Control Act 2022](#), 1 July 2022, para 2 p. 10

130 Department for Business, Energy and Industrial Strategy, [Consultation on the guidance for the Subsidy Control Act 2022](#), p. 7

131 House of Commons Library, [The UK Shared Prosperity Fund Research Briefing](#), p. 4

132 Institute for Government, [European structural funds: the UK Shared Prosperity Fund](#), 21 July 2021

133 Department for Levelling Up, Housing and Communities, [UK Shared Prosperity Fund: prospectus](#), 13 April 2022

year that the UK received on average from the EU structural funds as a whole. However, this figure is higher than the roughly £1.3 billion per year that the UK received from the European Regional Development Fund (ERDF) and the European Social Fund (ESF).¹³⁴ The UKSPF funding formula estimates the allocation that each UK nation received from the ERDF and ESF for the EU's 2014–20 financial framework period. This amount is then updated by inflation, and the national allocations for the UKSPF for 2024/25 are set to this level so that each nation receives the same in that year (adjusted for inflation) as it did on average from the EU in 2014–20.¹³⁵ After allocations are announced, local areas will have to create and submit investment plans showing in more detail how they intend to spend the money.¹³⁶

96. In the investment plan, lead local authorities will be asked to provide detail on how their proposed interventions will be delivered within the subsidy control regime, and their capacity and capability to manage the subsidy (and State Aid in the case of interventions affecting Northern Ireland).¹³⁷

97. On 19 July 2022, the Department for Levelling Up, Housing and Communities published guidance on subsidy control and the UKSPF.¹³⁸ This guidance stated that once the new subsidy control regime comes into force in late in 2022, public authorities will need to “have regard to the guidance on the Subsidy Control Act 2022 which will be published on gov.uk in due course”.¹³⁹ Therefore, applicants and public authorities granting UKSPF subsidies will need to consider the new subsidy control regime before awarding funding.

Interim UK subsidy control regime

98. Ahead of the Subsidy Control Act coming into force in late 2022, public authorities must comply with the interim subsidy control regime. The UK repealed the EU state aid regime prior to creating a new subsidy control regime. The Government announced in September 2020 that it would publish a consultation to consider the UK's subsidy control commitments, including whether the UK needed legislation.¹⁴⁰ On 31 December 2020, the Government published technical guidance on the UK's international subsidy control commitments, which implemented the UK's international obligations under the World Trade Organisation (WTO) Agreement on Subsidies and Countervailing Measures, the TCA, and other agreements. This guidance set out the main steps for UK public authorities to follow when awarding subsidies, in advance of the new regime.

99. The interim regime is based on self-assessment of subsidies by Government and public authorities, and there is no regulator.¹⁴¹ The Subsidy Control Act does not have a retrospective effect and will not place additional requirements on subsidies granted under schemes which have been made in compliance with the interim rules.¹⁴²

134 House of Commons Library, [The UK Shared Prosperity Fund Research Briefing](#), p. 15

135 House of Commons Library, [The UK Shared Prosperity Fund Research Briefing](#), p. 15

136 House of Commons Library, [The UK Shared Prosperity Fund Research Briefing](#), p. 4

137 Department for Levelling Up, Housing and Communities, [UK Shared Prosperity Fund: prospectus](#), 13 April 2022

138 Department for Levelling Up, Housing and Communities, [UK Shared Prosperity Fund: overview \(1\)](#), 19 July 2022

139 Department for Levelling Up, Housing and Communities, [UK Shared Prosperity Fund: subsidy control \(7\)](#), 19 July 2022

140 Department for Business, Energy and Industrial Strategy and The Rt Hon Alok Sharma MP, [Government sets out plans for new approach to subsidy control](#), 9 September 2020

141 House of Commons Library, [Subsidy Control Bill 2021–22](#), 17 September 2021, p. 13

142 [Subsidy Control Act 2022](#), Clause 48 (1)

100. During the interim subsidy control regime public authorities can ensure that they are compliant with the UK's international subsidy obligations by consulting and following the 'five step' process. The 'five steps' were designed to help public authorities award subsidies within the UK's international obligations and relevant domestic law. The five steps are:

- (1) Determine whether a measure is a subsidy and what international obligations are relevant.
- (2) Evaluate whether the measure is a prohibited subsidy.
- (3) If in scope of the UK-EU Trade and Cooperation Agreement, assess the subsidy against the principles.
- (4) Assess the likelihood of triggering a dispute under WTO ASCM rules and other FTAs.
- (5) Record the award of the subsidy.¹⁴³

101. To support public authorities in the application of the five steps the BEIS Department published a guidance document to provide clarity on the practical application of the interim subsidy control regime where the TCA is applicable. Some commentators, such as Birketts Solicitors, have stated that:

Whilst the FAQs as a whole provide some helpful practical guidance, uncertainty on the application of the interim regime remains. Many public bodies are often understandably hesitant in making large awards at this juncture, preferring rather to wait for a more certain regime to be set out.¹⁴⁴

102. Public authorities will need to update their understanding of the rules of the new subsidy control regime when it comes into force in late 2022. This includes delivery of subsidies from the UK Shared Prosperity Fund, where public authorities will need to consider the new subsidy control regime rules.

103. Although the UK Government has published further guidance on the implementation of subsidies, there is still a lack of detailed information in several areas of subsidy control guidance, which may cause uncertainty for public authorities who will need to seek advice on the new subsidy control regime after implementing the interim regime.

104. *The UK Shared Prosperity Fund is designed differently to its predecessor EU schemes. How subsidies are allocated, therefore, is crucial to ensuring the most effective use of public funds.*

105. *However, public authorities are in limbo until the Government publishes final guidance on the subsidy control regime. The UK Government needs to end this uncertainty by following the Scottish Government, which published guidance in September 2022, and publishing final guidance without delay. Only then will public authorities be in a position to make awarding decisions on subsidies with confidence and to prepare bids for funding from the UK Shared Prosperity Fund.*

143 Department for Business, Energy and Industrial Strategy, [Guidance on the UK's international subsidy control commitments](#), Section 3: Awarding a subsidy, Updated 24 June 2021

144 Birketts Solicitors, [Subsidy control update – the DBEIS FAQs and the new Subsidy Control Bill](#), 9 July 2021

106. *The Government should update the Committee within one year of implementation on the performance of the new subsidy control regime.*

4 Consumer Policy

UK consumer law

107. Consumer protection law regulates the contractual relationships between businesses and consumers. UK consumer law protects consumer rights when buying goods, services and digital content. It aims to ensure fairness and transparency. Much of the UK's consumer law is founded on a series of EU Directives and Regulations.¹⁴⁵ The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 implement many of the provisions of the Consumer Rights Directive (2011/83/EU) in the UK.¹⁴⁶ The Consumer Rights Act 2015, however, which is the cornerstone of the UK consumer protection regime, is a mix of EU and domestic derived law.

108. The key characteristics of the UK's consumer protection regime are derived from EU legislation. They comprise a:

- Fairness test—which considers consumer contract terms and conditions, and notices, which must not create an unfair imbalance in favour of a business
- transparency test—which requires consumer contract terms and conditions, and notices, to be written in plain and intelligible language to be enforceable
- right of withdrawal—a consumer's legal right to cancel a contract formed at a distance (e.g., online, over the phone or off-business premises) within 14 days
- implied standards and remedies—a requirement that consumer goods, services and digital content be of satisfactory quality, fit for purpose, and as described.¹⁴⁷

109. Most EU law applicable in the UK before the end of the transition period remains in effect within the UK indefinitely as “retained EU law”¹⁴⁸ (unless or until the Government decides to repeal or amend it). This retained EU law includes some measures relating to consumer protection¹⁴⁹ (and indeed to competition).

110. We note the Government's intention, by means of the Retained EU Law (Revocation and Reform) Bill, to assimilate, repeal or facilitate the amendment of retained EU law. One aspect of the proposals within the Bill will have a direct impact on this Committee: Clause 17 would amend the Legislative and Regulatory Reform Act 2006 to allow Legislative Reform Orders to be used to amend any retained direct EU legislation.¹⁵⁰ Under the House's Standing Orders, this Committee is charged with examining and reporting on most draft Legislative Reform Orders laid before the House.

145 House of Commons Library, [Brexit: UK consumer protection law briefing paper](#), Number 9126, 21 May 2021, p. 3

146 House of Commons Library, [Brexit: UK consumer protection law briefing paper](#), Number 9126, 21 May 2021, p. 5

147 House of Commons Library, [Brexit: UK consumer protection law briefing paper](#), Number 9126, 21 May 2021, p. 5

148 Retained EU law describes EU-derived rights and legislation preserved in UK law after the end of the Brexit transition period on 31 December 2020.

149 House of Commons Library, [Brexit: UK consumer protection law briefing paper](#), Number 9126, 21 May 2021, p. 3

150 Retained direct EU legislation is a subset of retained EU law and is defined in section 20 of the European Union (Withdrawal) Act 2018 as any direct EU legislation which forms part of domestic law by virtue of section 3 of that Act (as modified by or under the Act or by other domestic law from time to time, and including any instruments made under it on or after IP completion day). Broadly, it encompasses EU legislation which applied directly in UK domestic law (for example, EU regulations and EU decisions).

111. *We therefore request that the Government gives an early indication of the extent to which it expects to use its power under Clause 17 of the Retained EU Law (Revocation and Reform) Bill as introduced, and of the likely volume and rate of flow of draft legislative reform orders, so that the Committee can assess whether its working practices will need to change substantially. At the very least, the Committee would need early warning from the Government of each impending draft legislative reform order, in order to ensure effective and prompt scrutiny.*

UK divergence from EU consumer law

112. Although many UK consumer rights are based on EU-derived regulations and directives, most are now enshrined in UK law. As a result, since Brexit, the essential parts of UK consumer protection law have not significantly changed.¹⁵¹

113. The UK is now able to diverge from EU consumer law, legal interpretation, and consumer policy. While Brexit has not resulted in an immediate significant change to UK consumer protection law, consumer protection is not included in the “level playing field” areas within the UK-EU Trade and Cooperation Agreement (TCA). Therefore, the UK is under no obligation to maintain regulatory alignment with the EU in this area.¹⁵²

114. If significant divergence is experienced over time, UK traders wishing to sell goods, services and digital content to consumers in both the UK and the EU may need to create separate terms and conditions, and processes, to deal with differences between UK and EU consumer regimes and/or adopt different business practices.¹⁵³

115. Rocio Concha, Director of Policy and Advocacy and Chief Economist at Which?, told us that “any divergence should be to improve the protections that we have in the UK”. She emphasised the importance of consumer rights enforcement bodies and their powers, stating that “we do not want to see divergence weakening our rights in the UK”.¹⁵⁴ Paul Scully MP, then the BEIS Minister with responsibility for consumer rights policy, told us that the UK has “an excellent record of consumer protection, which is not dependent on EU membership” and that the UK should build on existing consumer protections.¹⁵⁵

Challenges for UK consumer policy

116. There have been a number of challenges within the UK’s consumer policy regime. In September 2020, the then Chancellor of the Exchequer, the Rt Hon Rishi Sunak MP, and then Secretary of State for BEIS, the Rt Hon Alok Sharma MP, commissioned a report on how the UK’s approach to competition and consumer issues could be improved in future from the then UK Anti-Corruption Champion, John Penrose MP. The *Power to the People* report considered how the UK’s competition regime can evolve to meet the Government’s policy aims of promoting a dynamic, innovation-driven economy which delivers for consumers and businesses within the context of recovery from COVID-19 and the end of the transition period.¹⁵⁶

151 House of Commons Library, [Brexit: UK consumer protection law briefing paper](#), Number 9126, 21 May 2021, p. 7

152 House of Commons Library, [Brexit: UK consumer protection law briefing paper](#), Number 9126, 21 May 2021, p. 16

153 House of Commons Library, [Brexit: UK consumer protection law briefing paper](#), Number 9126, 21 May 2021, p. 16

154 Q175

155 Q258

156 John Penrose MP, [Power to the People](#), 16 February 2021, p. 4

117. Published in February 2021, the *Power to the People* report (the Penrose report) concluded that swift change to the UK competition regime was needed:

[...] our independent competition and consumer regulation regime currently has a good reputation, but not a great one. International rankings put our major competition institutions behind USA, France, Germany, EU and Australia. [...] Sector regulators intervene heavily, creating regulatory burdens [...] Investors and business leaders say that officialdom moves too slowly in an increasingly fast-paced digital world. Citizen-consumers feel ripped off when they buy things like energy or car insurance, and increasingly feel that markets aren't set up to work for them. In other words, the system needs to be updated, improved and refreshed.¹⁵⁷

118. During oral evidence, when asked which sectors were particularly failing consumers, John Penrose noted that in the utilities industry, economic regulators were set up to tackle a network monopoly that resulted in consumers being “ripped off” or being in danger of being “ripped off”. He also described “a problem with any industry where there is information asymmetry: where the seller knows an awful lot more about it than the buyer, because they can bury rip-offs in small print”. He stated that this is most common in the financial services sector. Finally, he set out that in the digital sphere there are also new network monopolies that are “just a modern example of the old-fashioned network monopoly problems but coming up in a different flavour”.¹⁵⁸

119. We conducted a public survey in January 2022 to understand consumers' experiences of needing to use or find information about their consumer rights and protections. We asked participants about the effectiveness of the UK's consumer rights in providing the public with the correct level of protection and right of redress. We received 1,101 responses. The majority (65 per cent) had used their consumers rights for a physical product, 32 per cent had used their rights for a service, and the remaining 3 per cent were related to a digital product. The sectors that the majority of issues were related to were consumer goods (629 responses), aviation (187 responses), and 'other' (119 responses). Answers included in the 'other' category included: leisure, events, travel, household items and repairs, and sports equipment.¹⁵⁹

120. Weak competition and consumer policy will lead to detriment for consumers and worse economic outcomes, particularly for the most vulnerable in society. We encourage Ministers to build upon existing UK consumer law and to refrain from fundamental changes to it. Whilst UK consumer law is comprehensive, consumers still have low levels of understanding of their rights and enforcement is weak. We therefore call on Ministers to give consumer enforcement agencies additional powers and resources to improve their enforcement of consumer rights, in the interests of consumers and competition in markets. We also encourage the CMA to formally collaborate with consumer and competition law agencies in regulated sectors to reduce consumer detriment.

157 John Penrose MP, [Power to the People](#), 16 February 2021, p. 8

158 Q19

159 All other sectors received less than 50 responses. The full list of sectors can be found in Annex A.

COVID-19 impact on consumer rights

121. In March 2020, the CMA established a COVID-19 taskforce in response to several concerns that businesses might exploit the particular circumstances of the pandemic in order to take advantage of consumers. The COVID-19 Taskforce monitored market developments to allow the CMA to intervene as quickly as possible where required. The CMA had a range of intervention options including warnings, enforcement action, and seeking emergency powers.¹⁶⁰

122. The taskforce focused on key areas including:

- Scrutinising market developments to identify harmful sales and pricing practices as they emerge
- Warning firms suspected of exploiting these exceptional circumstances—and people’s vulnerability—through unjustifiable prices or misleading claims
- Taking enforcement action if there is evidence that firms may have breached competition or consumer protection law and fail to respond to warnings
- Equipping the CMA to advise Government on emergency legislation if there are negative impacts for people which cannot be addressed through existing powers
- Advising Government on how to ensure competition law does not stand in the way of legitimate measures that protect public health and support the supply of essential goods and services. It also advised on further policy and legislative measures to ensure that markets function as well as possible.

123. The COVID-19 Taskforce responded to dishonest and harmful practices observed during the pandemic, including price gouging (charging an artificially inflated price for high-demand goods or services during a period of emergency) of essential items, and failures to respect the refund rights of consumers. Following the Taskforce’s investigation into sectors such as holiday accommodation and package holidays, the CMA successfully secured hundreds of millions of pounds of refunds for customers whose holidays were cancelled.¹⁶¹

124. The taskforce published updates during the start of the pandemic between March and July 2020.¹⁶² It published a final update on 3 July 2020. The taskforce concluded that the vast majority of businesses were behaving in a reasonable way, but that the CMA would not hesitate to take enforcement action if there was evidence that businesses had breached competition or consumer protection law.¹⁶³

125. From 10 March to 28 June 2020, the CMA was contacted more than 80,000 times about coronavirus-related issues¹⁶⁴ and, as of July 2021, the CMA had received over 140,000 contacts from consumers.¹⁶⁵ The CMA focused on five sectors in response to concerns about refunds for lockdown related cancellations; holiday accommodation, weddings and events, nurseries and childcare, package holidays, and airlines and secured

160 Competition and Markets Authority, [CMA COVID-19 taskforce](#), 20 March 2020

161 Competition and Markets Authority, [Annual Report and Accounts 2020/21](#), 15 July 2021, p. 32

162 Competition and Markets Authority, [Latest update from CMA COVID-19 taskforce](#), 3 July 2020

163 Competition and Markets Authority, [Latest update from CMA COVID-19 taskforce](#), 3 July 2020

164 Competition and Markets Authority, [Latest update from CMA COVID-19 taskforce](#), 3 July 2020

165 Competition and Markets Authority, [Annual Report and Accounts 2020/21](#), 15 July 2021, p. 8, p 13

formal commitments from five major package travel companies to refund consumers over £200m. It also secured commitments from companies in holiday rentals and weddings sectors, including the provision of refunds.¹⁶⁶ The Taskforce and its oversight committee have now been disbanded.¹⁶⁷

126. During oral evidence, Lord Tyrie told us that that COVID-19 Taskforce “did some very good work”. He asserted that the Taskforce “should have been expanded and built upon to be a bedrock of part of the CMA’s activity, but it was disbanded shortly after I left. That was a mistake”.¹⁶⁸ Steve Ruddy, Chair of the Board at the Chartered Trading Standards Institute, also told us that “the CMA responded effectively in a number of markets in relation to COVID and worked well with trading standards services locally.”¹⁶⁹

127. The COVID-19 pandemic has exacerbated the negative effects of weak competition in some industries for consumers. Consumers have increasingly experienced rip-offs and asymmetry of information.

128. We commend the CMA for its COVID-19 Taskforce which was effective in improving consumer rights in several industries. However, we believe that this taskforce was disbanded prematurely. We ask the CMA to establish an horizon scanning unit that pro-actively engages on consumer law enforcement, as the COVID-19 Taskforce did following an assessment of the effectiveness of the COVID-19 Taskforce.

Consumer law enforcement

Role of the CMA in consumer policy

129. As part of its duties to promote competition for the benefits of consumers, the CMA has enforcement powers to ensure effective compliance so that consumers are treated fairly and can drive effective competition through the exercise of informed choice.¹⁷⁰

130. The CMA’s main consumer enforcement powers are shared with other bodies so that action is taken in each case by the appropriate bodies. These enforcement powers are:

- Powers to stop infringements of certain consumer laws. The CMA may seek an enforcement order from a civil court against traders which breach specific listed consumer laws including, in particular;
 - The Consumer Protection from Unfair Trading Regulations 2008 (CPRs). These impose a general duty on businesses not to trade unfairly with consumers (most breaches may also be enforced by the CMA using criminal powers)
 - The Consumer Rights Act 2015 (CRA), Part 2 of which protects consumers from traders that use unfair contract terms or notices.
- Criminal powers to prosecute traders that engage in the most unfair commercial practices under the CPRs

166 Competition and Markets Authority, [Annual Report and Accounts 2020/21](#), 15 July 2021, p. 8, p. 13

167 Financial Times, [UK competition regulator criticised for disbanding Covid unit](#), 29 August 2021

168 Q233

169 Q190

170 Competition and Markets Authority, [Consumer Protection: Enforcement Guidance](#), 17 August 2016, p.4, 2.1–2

- The power to seek an injunction to stop businesses using unfair terms or notices with consumers.¹⁷¹

131. The CMA also has investigatory powers to enable it to investigate breaches of consumer law.¹⁷²

Effectiveness of the CMA's current consumer powers

132. The strength and effectiveness of the CMA's current consumer powers have been discussed during this inquiry. When questioned about whether competition was improving in the UK economy, the then Small Business, Consumers and Labour Markets Minister, Paul Scully MP, told us that “in terms of consumer law and the consumer approach, we are getting the balance largely right in the CMA”.¹⁷³

133. However, a number of witnesses told us that the CMA's consumer powers need to be expanded. John Penrose MP told us that the CMA's consumer powers are “currently a slightly pale imitation of its other powers in antitrust and elsewhere in its work, [they] need to be upgraded because, in general, those powers are less effective”.¹⁷⁴ George Peretz KC, Joint Chair for the Joint Working Party of UK Bars and Law Societies on Competition Law, and Joint Convenor for the UK State Aid Law Association, agreed, stating that there is “a consensus that the CMA's powers, which are aimed to deal, in a systemic way, with companies whose business models are about exploiting consumers, need beefing up substantially”.¹⁷⁵

134. Similarly, Lord Tyrie, former Chair of the CMA, told us that “the existing consumer protection powers are not strong enough to enable a good job to be done”.¹⁷⁶ Steve Ruddy told us that from a trading standards perspective the CMA “has an important role to play and would benefit from clearer statutory responsibilities and an extension of administrative powers”.¹⁷⁷

Proposed changes to the CMA's consumer powers

135. On 20 April 2022, the Government released its response to the *Reforming Competition and Consumer Policy* consultation. The consultation set out policy proposals to strengthen the UK consumer and competition policy regime.¹⁷⁸ A number of proposals that will impact the CMA have been put forward. For example, the CMA, instead of a court, would be able to award compensation to consumers and directly impose financial penalties for:

- breaking consumer protection laws, with penalties worth up to 10% of global annual turnover for businesses or up to £300,000 in the case of an individual

171 Competition and Markets Authority, [Consumer Protection: Enforcement Guidance](#), 17 August 2016, p.5–6, 2.4

172 Competition and Markets Authority, [Consumer Protection: Enforcement Guidance](#), 17 August 2016, p.6, 2.5

173 Q254

174 Q11

175 Q23

176 Q242

177 Q190

178 Department for Business, Energy and Industrial Strategy, Paul Scully MP, [New rules to protect consumers' hard-earned cash](#), 20 April 2022

- breaching undertakings given to the CMA, with penalties worth up to 5% of a business's annual global turnover or up to £150,000 for an individual, and additional daily penalties for continued non-compliance
- non-compliance with an information notice, concealing evidence or providing false information, with penalties worth up to 1% of a business's annual global turnover or up to £30,000 for an individual, and additional daily penalties for continued non-compliance.¹⁷⁹

136. The Government plans to tackle illegal anticompetitive conduct through new measures including strengthening the CMA's evidence-gathering powers and ensuring competition law protects UK consumers from anticompetitive conduct wherever it is carried out, such as companies colluding to increase prices. The Government is also planning to increase the ability for the CMA to fine businesses abusing their market position, even in smaller markets, by reducing the minimum turnover threshold for immunity from financial penalties from £50 million to £20 million.¹⁸⁰

137. The Minister told us that the Government has “decided to tackle particular areas of consumer detriment more head-on” and noted that fair competition between companies will ultimately benefit consumers.¹⁸¹

138. Following the Government's consultation response, the Queen's Speech on 10 May 2022 announced that draft legislation to promote competition, strengthen consumer rights and protect households and businesses would be published. Background briefing for the speech said that the Draft Digital Markets, Competition and Consumer Bill would support the proposed measures in the consultation by establishing key elements to strengthen the CMA's consumer powers, including enabling the CMA to take swift and decisive action on behalf of consumers and to boost competition and giving the CMA the ability to decide for itself when consumer law has been broken, and to issue monetary penalties for those breaches.¹⁸²

139. We welcome the Government's recent proposals to increase the CMA's ability to fine businesses that abuse their market position, by reducing the minimum turnover threshold for immunity from financial penalties from £50 million to £20 million and imposing penalties of up to 10% of global annual turnover in instances where consumer protection laws are broken.

140. We believe that lower thresholds and higher penalties are necessary so that bigger businesses which break the rules do not see financial penalties as a small business cost.

141. We are concerned that the Draft Digital Markets, Competition and Consumer Bill is yet to be published, not least because a period of pre-legislative scrutiny is envisaged, and we therefore call on Ministers to publish the draft bill as soon as possible.

179 Department for Business, Energy and Industrial Strategy, Paul Scully MP, [New rules to protect consumers' hard-earned cash](#), 20 April 2022

180 Department for Business, Energy and Industrial Strategy, Paul Scully MP, [New rules to protect consumers' hard-earned cash](#), 20 April 2022

181 Q290

182 Prime Minister's Office, 10 Downing Street, [Queen's Speech 2022: background briefing notes](#), 10 May 2022, 34–35

Consumer redress

142. Matthew Upton, Director of Policy at Citizens Advice, told us that consumers' awareness of their rights "is pretty good" and consumers are "pretty confident that, if things go wrong, there will be some form of redress to protect them".¹⁸³ However, Steve Ruddy, Chair of the Board at the Chartered Trading Standards Institute, did not agree. He told us that from a trading standards perspective, "it feels slightly less rosy". He noted research by the Consumer Council of Northern Ireland in 2021, which found that awareness of consumer rights was around 38% and consumer understanding of what rights this legislation actually meant was only 27% in practice. He stated that the research indicated "quite a potential problem, because consumer education and consumer awareness of rights is pretty central and important for a well-functioning economy and for effective competition".¹⁸⁴

143. Both Matthew Upton and Steve Ruddy noted that knowledge of consumer rights of redress varied across different consumer groups. Steve Ruddy told us that a high proportion of consumers seeking the help of Alternative Dispute Resolution (ADR) mechanisms—processes that enable consumers to resolve a dispute with a company without having to go to court—are vulnerable. He told us that vulnerability increases with complexity in markets, particularly in relation to the COVID-19 pandemic, Brexit, and other changing markets, such as within the green economy. He described vulnerability as "crucial".¹⁸⁵

144. During our consumer rights survey in January 2022, we found that consumer groups like Which? and Citizens Advice had been the primary source of advice for consumers on consumer rights (509 responses). This was followed by online search (476 responses) and media such as TV, newspapers, or radio (337 responses). However, the large majority of respondents (71 per cent) answered that they think they need more consumer rights than they currently have. Similarly, 90 per cent of respondents answered that they think it should be easier to use their consumer rights, as well as 90 per cent who think that the Government needs to make it easier for people to use their consumer rights.

Trust in consumer redress

145. Rocio Concha, Director of Policy and Advocacy and Chief Economist at Which?, agreed with the Penrose report findings that high-trust economies perform better than low-trust economies. She told us that effective competition policy and the right protections are needed so that consumers have the confidence to engage in markets.¹⁸⁶ She noted that:

If consumers do not trust that they have the right protections in place, they will not shop around, or they do not engage with a particular new sector or service, or, if they engage, they sometimes go to the incumbent. They do not try new businesses because they are worried that if something goes wrong, they will not have the right protections in place.¹⁸⁷

146. Matthew Vickers, CEO and Chief Ombudsman at the Ombudsman Services, described ways in which consumer trust could be increased. He told us that creating a

183 Q168

184 Q168

185 Q168

186 Q193

187 Q199

new digital case management system created new resilience for the service. He also told us that through the COVID-19 pandemic in particular, digital resolution techniques helped the Ombudsman Services to deal with a backlog of complaints more cheaply and quickly, as well as providing better data that can be used to undertake preventive work. He stated that the use of this new system “really unlocked our ability to be able to use that data and insight with regulators and industry”.¹⁸⁸

147. We support the idea that there should be more accessible support for consumers across the UK. We encourage the development of ombudsman services, including in sectors not currently covered by an ombudsman, as an independent and trusted arbiter that consumers understand and can engage with.

148. *Regulators and other relevant stakeholders should invest in better online arbitration systems that are quicker and cheaper, to speed up enforcement of minor consumer rights breaches. These investments should include better internal digital case management systems and other options for consumers who are unable to access online services.*

Consumer rights in air travel

149. Air travel has been raised as a particular area of focus during this inquiry. In our public survey in January 2022, aviation was the second highest sector (187 responses) cited by consumers who were seeking redress for an issue.

150. Since we took evidence in March 2022, airline passengers have faced significant disruption at UK airports. Since April, passengers have experienced issues such as mass flight cancellations,¹⁸⁹ and long delays.¹⁹⁰ The problems were in part due to staff shortages, as the airlines struggled to fulfil their schedule to meet the increase in demand from passengers following the end of travel restrictions in the UK and many holiday destinations in 2022. Heathrow Airport’s Chief Executive, John Holland-Kaye, warned that “it will take 12 to 18 months for the aviation sector to fully recover capacity, so we will have to really carefully manage supply and demand”.¹⁹¹

151. We launched a survey between 9 June 2022 and 12 June 2022 to understand the public’s experiences with airports and airlines.¹⁹² We received 466 responses and found that less than 15 per cent of respondents felt as though they were treated fairly by their airlines.

152. We took evidence on the subject in a one-off session on 14 June 2022. We heard from Simon Calder, travel journalist and broadcaster, that there is “significant consumer detriment” caused by some airlines, because a high number of flight cancellations increases the price of tickets on remaining flights above what they would usually be.¹⁹³ Sue Davies, Head of Consumer Rights and Food Policy at Which?, was critical of airlines:

188 Q216

189 Reuters, [Airline EasyJet cancels more than 200 flights](#), 28 May 2022; The Independent, [All the British Airways flights that are cancelled today from UK airports](#), 3 June 2022

190 Euronews, [‘Mammoth queues’ at Heathrow airport leave travellers in chaos](#), 24 May 2022; Manchester Airport, [A message for customers travelling through Manchester Airport today](#), 29 May 2022

191 The Financial Times, [Heathrow boss says airport disruption will last up to 18 months](#), 7 June 2022

192 Business, Energy and Industrial Strategy Committee, [Flight cancellations: MPs launch flight chaos survey ahead of questioning airlines and industry bosses](#), 9 June 2022

193 Business, Energy and Industrial Strategy, [Oral Evidence: Flight cancellations and compensation](#), HC 370, 14 June 2022, Q9

There is blatant flouting of consumer rights and a failure to put passenger interest first. That does not only impact on consumers. It will impact on consumers' confidence in booking going forward. We need short-term actions, but also a big overhaul of consumer rights and how they are enforced.¹⁹⁴

153. Sue Davies also raised the issue of the Civil Aviation Authority's (CAA), relationship with airlines as the aviation sector's regulator.¹⁹⁵ She told us that the CAA does not have strong enough powers and that "it is not standing up enough for consumer interests and it is not being proactive enough".¹⁹⁶

154. Richard Moriarty, Chief Executive of the CAA, told us that he "profoundly agree[d] with both Which? and Simon [Calder]... that history has attested that our powers are weak in the modern circumstances of aviation".¹⁹⁷

155. In April 2022, the Transport Committee published a report on *UK aviation: Reform for Take-off*.¹⁹⁸ The report concluded that the CAA "urgently requires the power to impose financial penalties on airlines that do not provide complete refunds to consumers when they are required to do so by law". It stated that in the absence of additional powers, the CAA "must utilise its existing powers to challenge businesses and to pursue enforcement orders from the courts to tackle infringements of consumer rights in relation to refunds".¹⁹⁹ In its response, the Department for Transport noted the recommendations regarding the CAA but did not provide an update on whether they would be implemented.²⁰⁰

156. We believe that UK consumers are experiencing significant consumer detriment as a result of the behaviour of a number of airlines. We agree with the Transport Committee that the CAA's current powers are not adequate to protect consumers' rights in the airline sector.

157. We support the Transport Committee's recommendations in its *UK aviation: reform for take-off* Report of the 2021–22 Session, on the need for the Civil Aviation Authority to have the power to impose financial penalties on airlines which fail to refund customers when required to do so by law. We recommend that the BEIS Department considers the enforcement powers of sectoral regulators more widely, as part of our recommendations in this report on its future work with the CMA, as the primary enforcer of consumer law in the UK.

194 Business, Energy and Industrial Strategy, [Oral Evidence: Flight cancellations and compensation](#), HC 370, 14 June 2022, Q1

195 Business, Energy and Industrial Strategy, [Oral Evidence: Flight cancellations and compensation](#), HC 370, 14 June 2022, Q5

196 Business, Energy and Industrial Strategy, [Oral Evidence: Flight cancellations and compensation](#), HC 370, 14 June 2022, Q6

197 Business, Energy and Industrial Strategy, [Oral Evidence: Flight cancellations and compensation](#), HC 370, 14 June 2022, Q131

198 Transport Committee, [UK aviation: reform for take-off](#), Fifth Report of the Session 2021–22, HC683 25 April 2022

199 Transport Committee, [UK aviation: reform for take-off](#), Fifth Report of the Session 2021–22, HC683 25 April 2022, para 66 and 67, p. 26

200 Transport Committee, [UK aviation: reform for take-off: Government response to the Committee's Fifth Report of Session 2021–22](#), HC 542, 11 July 2022, p. 7

5 Digital Markets

Post-Brexit digital markets regime

158. A global debate is taking place about whether the dominance of a small number of tech giants or ‘big tech’ companies is stifling competition.²⁰¹ As digital markets, and the online platforms within them, are inherently global, solutions to dominance and subsequent weak competition in this area require the UK to co-operate with competition authorities around the world.²⁰²

159. Consumer protections online have become a focus of digital markets regulation. The CMA noted in its 2022 *State of UK Competition* report that weak competition in search and social media markets risks a reduction in innovation and choice.²⁰³ Lord Tyrie noted that consumers “feel ripped off, and digital technology has increased that sense”.²⁰⁴ He told us that digital markets are “bringing scope for detriment and rip-off on quite a big scale”, including detriment for those who were previously confident consumers.²⁰⁵

160. Increasing digital markets regulation has also had an impact on UK businesses. TechUK told us in written evidence that large tech companies such as tech ‘unicorns’ have grown and scaled due to a highly competitive and open market within the UK that has increased both domestic and foreign direct investment into the tech sector since 2011. It stated that this was a significant achievement considering the uncertainties caused by continuing negotiations over the UK’s relationship with Europe and the impact of the COVID-19 pandemic.²⁰⁶ The Department for Digital, Culture, Media, & Sport (DCMS) estimated that in 2019 digital technologies contributed £151 billion in UK output and accounted for 1.6 million UK jobs.²⁰⁷

International digital markets regulation

161. Internationally, a level of consensus has developed about the need for action to address the challenges within digital markets, and a growing number of countries are seeking to increase regulation including France, Germany, Australia and Japan.²⁰⁸

162. The US has also explored a number of changes to digital regulation in recent years. In October 2019, the US House Committee on the Judiciary launched a Digital Markets Investigation to explore the power of tech giants in digital markets.²⁰⁹ The report, published in October 2020, made a range of recommendations to restore competition in digital markets.²¹⁰ The US has also introduced the American Innovation and Choice Online

201 Competition and Markets Authority, [Online platforms and digital advertising, Market study final report](#), 1 July 2020, p. 358

202 House of Commons Library, [The UK competition regime](#), 04814, 25 May 2021, p. 21

203 Competition and Markets Authority, [The State of UK Competition](#), 29 April 2022, p. 14, paras 25

204 Q229

205 Q233

206 techUK ([SBC0006](#))

207 Competition and Markets Authority, [The State of UK Competition](#), 29 April 2022, p. 174 para 8.3

208 Competition and Markets Authority, [The State of UK Competition](#), 29 April 2022, p. 21 para 1.18 and p. 174 para 8.4

209 US House Committee on the Judiciary, [Digital Markets Investigation](#)

210 Subcommittee on Antitrust, Commercial and Administrative Law of the Committee on the judiciary, [Investigation of Competition in Digital Markets Majority Staff Report and Recommendations](#), 6 October 2020

Act, reported to the US Senate in February 2022. This Bill aims to establish affirmative defences for acts such as unfairly limiting the availability of competing products on large online platforms.²¹¹

163. The European Parliament has stated that the dominant position gained by some digital platforms gives them significant advantages over competitors, but also allows for undue influence over democracy, fundamental rights, societies, and the economy. It sets out that some platforms often determine future innovations or consumer choice and serve as so-called gatekeepers between businesses and internet users. To address this imbalance, the European Commission published its Digital Markets Act²¹² (DMA) proposals in December 2020, which include ex-ante rules covering large online platforms which are deemed to be ‘gatekeepers’.²¹³

164. The purpose of the DMA is to ensure a level playing field for all digital companies, regardless of their size. The regulation will lay down clear rules for big platforms—a list of “dos” and “don’ts”—which aim to stop them from imposing unfair conditions on businesses and consumers. The DMA will also set out the criteria for identifying large online platforms as gatekeepers and will give the European Commission the power to carry out market investigations, allowing for updating the obligations for gatekeepers when necessary and sanctioning bad behaviour. The EU expects the rules to boost innovation, growth and competitiveness and help smaller companies and start-ups compete with very large players.²¹⁴

165. On 24 March 2022, the Council of the EU and the European Parliament reached a provisional agreement on the DMA, which was endorsed by EU Member States’ representatives on 11 May 2022. On 18 July 2022, the Council gave final approval to the DMA. After being signed by the President of the European Parliament and the President of the Council, it will be published in the Official Journal of the European Union and will start to apply from March 2023.²¹⁵

166. We acknowledge that the UK approach to digital markets regulation will be different to that of the EU. However, we welcome EU efforts to increase competition and ensure a level playing field for all digital companies. We support updates to EU law that include designating gatekeepers, setting rules for firms, and sanctioning those companies which abuse their dominant position.

167. During our visit to the US, we discussed with competition regulators, large tech firms, and competitor firms, examples of companies with gatekeeper status and those companies which abuse their dominant position.

168. We discussed the limited choice for consumers between mobile app stores, the challenges with search and social media data portability (when customers can move their data from one platform to another), and data interoperability (when different systems can communicate with one another and share data). We also discussed the behaviour of app

211 Congress.Gov, [S.2992 - 117th Congress \(2021–2022\): American Innovation and Choice Online Act](#)

212 European Commission, [Digital Markets Act](#)

213 Competition and Markets Authority, [The State of UK Competition](#), 29 April 2022, p. 21 para 1.18

214 European Parliament News, [EU Digital Markets Act and Digital Services Act explained](#), 20 January 2022

215 Council of the European Union, [DMA: Council gives final approval to new rules for fair competition online](#), 18 July 2022

store owners towards smaller app developers, which often have to pay to list their app on an app store. This discussion raised concerns about abuse of dominant positions by ‘big tech’ firms.

CMA digital markets collaboration

169. The CMA is collaborating with others within the UK to regulate digital markets. The Digital Regulation Cooperation Forum (DRCF) was formed in July 2020 by the CMA, the Information Commissioner’s Office (ICO) and Ofcom. In April 2021, the Financial Conduct Authority (FCA) joined as a full member of the DRCF, having previously been an observer member. The DRCF was established to ensure greater levels of cooperation between the organisations due to the unique challenges posed by regulation of online and digital services.²¹⁶ Through the DRCF, the organisations aim to achieve a coherent, informed, and responsive regulation of the UK digital economy.²¹⁷

170. The DRCF is a non-statutory body that does not have decision-making powers and does not provide formal advice or direction to its members. It is not directly accountable to Parliament.²¹⁸ Members of the DRCF are held to account individually, with each member of the DRCF “held to high standards of accountability for its decisions and processes”.²¹⁹

171. Andrea Coscelli, former Chief Executive of the Competition and Markets Authority, told us that the DRCF is already effective in regulating digital markets. He described the CMA’s investigation into Google’s privacy sandbox—an initiative to facilitate online advertising without the use of third-party cookies—and told us that the CMA “worked very closely with the Information Commissioner’s Office under the DRCF banner”.²²⁰ Similarly, Neil Ross, Head of Policy at techUK, told us that the DRCF is “hugely welcome”.

172. BEIS officials, Alesha De Freitas and Niall Mackenzie, also described the close working relationships between regulators and Government departments in digital markets.²²¹ Niall Mackenzie told us that Ofcom and the CMA as well as DCMS and BEIS “are working very closely together to try to make sure there are no gaps in between or double regulation”.²²²

173. On 9 March 2019, the House of Lords Communications and Digital Committee published a report on *Regulating in a digital world*. The Committee argued that there were insufficiencies in the then existing regulatory system in its ability to confront the challenges posed by the growth of technological developments.²²³

174. The Committee put forward two key recommendations in their report: the first was a set of ten principles that shape and frame all regulation of the internet, and the second was a new Digital Authority to oversee digital regulation, with access to the highest levels of the Government.²²⁴ In a written submission in response to the latter recommendation, the DRCF rejected the need for a Digital Authority, stating that they “can deliver some of the

216 The Competition and Markets Authority, [The Digital Regulation Cooperation Forum](#)

217 The Competition and Markets Authority, [The Digital Regulation Cooperation Forum launch document](#), p. 1

218 The Competition and Markets Authority, [The Digital Regulation Cooperation Forum launch document](#), p. 2

219 House of Lords Communications and Digital Committee inquiry into Digital Regulation, [Digital Regulation Cooperation Forum-written evidence \(DRG0019\)](#), para 21

220 Q128

221 Q284

222 Q284

223 House of Lords Communications and Digital Committee, [Digital regulation: joined up and accountable](#), p. 2

224 House of Lords Communications and Digital Committee, [Regulating in a digital world](#), p. 3

same benefits without the need for introducing an additional authority.” The DRCF had argued that the creation of a Digital Authority “could also reduce the clarity for industry and consumers on respective roles and responsibilities”.²²⁵

175. Following the *Regulating in a digital world* report, the Committee launched a shorter inquiry and published a report on *Digital Regulation: Joined Up and Accountable* on 13 December 2021. The inquiry was launched in response to substantial changes in digital technologies and their regulation since the 2019 report was published.²²⁶

176. In the report, the Committee acknowledged that there had been improvements to digital regulation since the formation of the DRCF. However, it also argued that significant challenges remained, which the Committee did not believe that the DRCF in its current form was equipped to address.²²⁷ The Committee expressed concerns that the DRCF had not included enough statutory regulators with significant interests and expertise in the digital sphere for horizon scanning efforts, and it recommended that the full DRCF membership should be extended, and that the DRCF should strengthen and formalise links with industry and academia. The Committee also expressed concern over potential regulatory conflicts, arguing that there was not a sufficiently rigorous and accountable process for resolving conflicts and coordinating regulatory objectives. It recommended that the DRCF’s approach to cooperation between members should be formalised and that the DRCF should be put on a statutory footing (as the ‘Digital Regulation Board’), with independent non-executive members appointed, including an independent chair.²²⁸

177. Other parliamentary committees have scrutinised digital regulation in the UK. A Joint Committee of both Houses was established in July 2021 to scrutinise the Draft Online Safety Bill, and it published its report on 14 December 2021.²²⁹ Whilst the Committee acknowledged that the Draft Bill was “a key step forward” in “bringing accountability and responsibility to the internet”, it felt that the Draft Bill could be strengthened in many ways.²³⁰ The Committee’s recommendations centred around two core principles of responsible internet governance: that online services should be held accountable for the design operation of their systems, and that regulation should be governed by a democratic legislature and an independent regulator.²³¹

178. It reiterated the House of Lords Communications and Digital Committee’s recommendation in its *Digital Regulation* report, that regulators in the DRCF should be under a statutory requirement to cooperate and consult with one another.²³²

179. *We agree with the recommendations of the Joint Committee on the Online Safety Bill and the House of Lords Communications and Digital Committee, that the Digital Regulation Co-operation Forum (DRCF) should have a more formal status and clearer*

225 House of Lords Communications and Digital Committee inquiry into Digital Regulation, [Digital Regulation Cooperation Forum-written evidence \(DRG0019\)](#)

226 House of Lords Communications and Digital Committee, [Digital regulation: joined up and accountable](#)

227 House of Lords Communications and Digital Committee, [Digital regulation: joined up and accountable](#), p. 2

228 House of Lords Communications and Digital Committee, [Digital regulation: joined up and accountable](#), p. 21–2

229 Joint Committee on the Draft Online Safety Bill, [Draft Online Safety Bill](#), Report of Session 2021–22, 14 December 2021

230 Joint Committee on the Draft Online Safety Bill, [Draft Online Safety Bill](#), Report of Session 2021–22, 14 December 2021, p.3.

231 Joint Committee on the Draft Online Safety Bill, [Draft Online Safety Bill](#), Report of Session 2021–22, 14 December 2021, p.3

232 Joint Committee on the Draft Online Safety Bill, [Draft Online Safety Bill](#), Report of Session 2021–22, 14 December 2021, p. 101, paragraph 347

lines of accountability, given the increasingly important role it plays in decision making between regulators. However, as the DRCF does not require formal powers, and funding is allocated by the member regulators, we do not believe that a statutory underpinning is required.

180. *However, we do believe that the Digital Regulation Co-operation Forum's accountability arrangements need to be updated. Until such time as these arrangements are formally agreed, the DRCF should proactively report to this Committee about the delivery of its objectives and any key decisions that it takes.*

CMA digital markets investigations

181. The CMA is increasingly using its powers to investigate competition in digital markets. The CMA's current digital markets investigations include:

- An investigation into Google's 'Privacy Sandbox' browser changes: The CMA has accepted commitments offered by Google that address the CMA's competition concerns resulting from investigating Google's proposals to remove third party cookies and other functionalities from its Chrome browser.²³³ On 28 July 2022, the CMA published its first update report on the implementation of Google's Privacy Sandbox commitments accepted by the CMA in February 2022.²³⁴
- An investigation into Facebook's (now known as Meta) use of advertising data: The CMA is investigating whether Facebook might be abusing a dominant position in social media or digital advertising markets through its collection and use of advertising data.²³⁵
- An investigation into Apple AppStore: The CMA is investigating Apple's conduct in relation to the distribution of apps on iOS and iPadOS devices in the UK, in particular, the terms and conditions governing app developers' access to Apple's App Store.²³⁶

Antitrust and merger control

182. The CMA is also actively investigating mergers and acquisitions in digital markets. Under section 106 of the Enterprise Act 2002, the CMA can obtain and review information relating to merger situations and has a duty to refer for an in-depth 'phase 2' investigation any relevant merger situation where it believes that it is or may be the case that the merger has resulted or may be expected to result in a substantial lessening of competition in a UK market.²³⁷ From January 2021, the CMA officially adopted trans-national mergers

233 Competition and Markets Authority, [Investigation into Google's 'Privacy Sandbox' browser changes](#), 8 January 2021

234 Competition and Markets Authority, [CMA update report on implementation of the Privacy Sandbox commitments](#), 28 July 2022

235 Competition and Markets Authority, [Investigation into Meta's \(formerly Facebook\) use of data](#), 4 June 2021

236 Competition and Markets Authority, [Investigation into Apple AppStore](#), 4 March 2021

237 Competition and Markets Authority, [Mergers: Guidance on the CMA's jurisdiction and procedure](#), January 2021
CMA2 revised (as amended on 4 January 2022), p. 5–6

and cartel cases over which the European Commission had previously had exclusive jurisdiction, adding to the CMA's existing responsibilities in the field of mergers and anti-trust control.²³⁸

183. Sunil Patel, Chief Data Officer at international professional services firm PwC, told us that many start-up companies “are created with that express desire to be acquired at some point”. However, he stated that conditions could be placed on mergers and acquisitions that benefit UK regions and local economies such as developing jobs in regions to support levelling-up.²³⁹ Mr Patel also told us that when speaking to businesses and investors, technology is seen as the biggest economic growth engine in the coming years. He said that the largest area of mergers and acquisitions activity will be in the technology sector and that, as digital markets and platforms cut across all sectors, the digital space “needs to be managed and regulated across everything because it is pervasive”.²⁴⁰

184. Recently, the CMA's merger and acquisition investigations have included the completed acquisition by Facebook, Inc (now Meta Platforms, Inc) of Giphy, Inc.²⁴¹ In line with its Phase 2 provisional findings, on 30 November 2021, the CMA concluded that Facebook's acquisition of Giphy would reduce competition between social media platforms and that the deal had removed Giphy as a potential challenger in the display advertising market. The CMA therefore directed Facebook to sell Giphy.²⁴² Following this judgement, Facebook appealed against the CMA's decision. On 14 June 2022, the Competition Appeal Tribunal endorsed the CMA's assessment and upheld its decision on five of the six challenged grounds.²⁴³

185. During our visit to the US, competition authorities noted the difficulty in regulating tech platforms that operate across jurisdictions. Authorities praised the work of the CMA, its collaboration with international bodies, and supported future collaboration in this area. Similarly, during our visit to Brussels, EU competition agencies told us that collaboration with the CMA on digital markets was positive and that each jurisdiction can learn lessons from the regulatory approach of the others.

186. *There are clear examples of market dominance in digital markets globally which have been well documented. We heard from witnesses, and during our visit to the US, strong evidence of abuses of market dominance which warrant intervention. We encourage the CMA to investigate these instances closely and collaborate internationally to promote further competition between digital firms. We also call on the CMA to continue with its market studies and for the Government to continue to ensure that the CMA is funded to carry out this work.*

UK digital markets reform

187. In March 2019, the UK's Digital Competition Expert Panel led by Professor Jason Furman published its *Unlocking digital competition* report (also known as the Furman

238 Competition and Markets Authority, [Annual Plan 2020/21](#), 19 March 2020, p. 1; Competition and Markets Authority, [Annual Report and Accounts 2020/21](#), 15 July 2021, p. 6

239 Q160

240 Q143

241 Competition and Markets Authority, [Facebook, Inc \(now Meta Platforms, Inc\) / Giphy, Inc merger inquiry](#), 12 June 2020

242 Competition and Markets Authority, [CMA directs Facebook to sell Giphy](#), 30 November 2021

243 Competition and Markets Authority, [CAT endorses CMA assessment that Meta's purchase of Giphy harms competition](#), 14 June 2022

Review) on the state of competition in digital markets. The report was commissioned by the UK Government in 2018 and proposed reforms to help unlock the opportunities of the digital economy. The Furman Review observed that digital technology provides substantial benefits to consumers and the economy. However, it also found that “digital markets are still not living up to their potential”. The review noted that “powerful economic factors” have limited competition in the market, meaning that consumers do not experience the full benefits and innovations of competition.²⁴⁴

188. The Furman Review proposed a number of recommendations, including the establishment of a Digital Markets Unit (DMU) within the CMA.²⁴⁵ It also proposed updating merger and antitrust enforcement rules by recommending that firms with ‘Strategic Market Status’ (SMS)—entrenched market power giving them a strategic position in relation to particular digital activities—should be required to notify all acquisitions to the CMA.²⁴⁶ The review set out 15 recommendations in total, proposing a set of pro-competition measures to open up digital markets.

189. The Digital Markets Unit (DMU) was established in shadow form in April 2021 following the Furman Review recommendations. It works to operationalise the future UK pro-competition regime for digital markets.²⁴⁷ The Terms of Reference setting out the role of the non-statutory DMU were published by the Government in July 2021, and they include carrying out preparatory work to implement a statutory regime, supporting and advising the Government on establishing a statutory regime, evidence-gathering on digital markets, and engaging stakeholders across industry, academia, other regulators, and Government.²⁴⁸

190. Formal powers for the DMU and for the new regulatory regime require legislation. The Government has committed to legislating when Parliamentary time allows.²⁴⁹ In a *Work of the BEIS Department* oral evidence session in June 2022, the then Business Secretary, the Rt Hon Kwasi Kwarteng MP, described the legislative timetable for the Draft Digital Markets, Competition and Consumer Bill that will provide the DMU with these powers, stating that “if there is a fourth Session ... [it] will be in, and if there is time and it is a long third Session, ... [it] should be in as well”.²⁵⁰

191. On 20 July 2021, the BEIS Department and the Department for Digital, Culture, Media & Sport opened a consultation on *A new pro-competition regime for digital markets*.²⁵¹ The consultation closed on 1 October 2021. Key reform proposals included establishing a pro-competition regime for digital markets and that the Digital Markets Unit (DMU) would have a range of powers to monitor and enforce the new regime.²⁵²

244 Digital Competition Expert Panel, [Unlocking digital competition: Report from the Digital Competition Expert Panel](#), 13 March 2019, p. 17 para 1.1

245 Digital Competition Expert Panel, [Unlocking digital competition: Report from the Digital Competition Expert Panel](#), 13 March 2019, p. 5

246 Digital Competition Expert Panel, [Unlocking digital competition: Report from the Digital Competition Expert Panel](#), 13 March 2019, p. 12

247 Competition and Markets Authority, [Annual Report and Accounts 2020/21](#), 15 July 2021, p. 6

248 Competition and Markets Authority, [Digital Markets Unit](#), Published 7 July 2021

249 Competition and Markets Authority, [Digital Markets Unit](#), Published 7 July 2021

250 Business, Energy and Industrial Strategy Committee, [Oral evidence: The work of the BEIS Department](#), 28 June 2022, Q116

251 Department for Business, Energy and Industrial Strategy and Department for Digital, Culture, Media and Sport, [A new pro-competition for digital markets](#), 20 July 2021

252 Department for Business, Energy and Industrial Strategy and Department for Digital, Culture, Media and Sport, [A new pro-competition for digital markets](#), 20 July 2021, p.7

192. Under these reforms, the DMU would be granted powers to introduce “pro-competitive interventions” (PCIs) to open up digital markets.²⁵³ The consultation also proposed that the pro-competition regime should be proportionate and targeted at firms designated with strategic market status which are considered likely to pose the greatest risk of harm to digital markets.²⁵⁴

193. On 6 May 2022, the Government released its response to the *New pro-competition regime for digital markets* consultation.²⁵⁵ The response confirmed that the regime would be implemented and enforced by the DMU and would be targeted at a small number of firms designated as having strategic market status in one or more activities. These firms would be subject to a code of conduct, and the DMU would be able to impose financial penalties of up to 10% of a firm’s global turnover for breaches.²⁵⁶

194. On 10 May 2022, a Draft Digital Markets, Competition and Consumer Bill was announced in the Queen’s Speech.²⁵⁷ The main digital markets elements of the Draft Bill will be:

- Tackling subscription traps by requiring businesses to provide clearer information to consumers and to send reminders before a contract auto-renews;
- updating consumer law to prohibit commissioning fake reviews, offering to provide fake reviews, or hosting consumer reviews without taking reasonable steps to ensure reviews are genuine;
- empowering the Digital Markets Unit to designate a small number of firms who are very powerful in particular digital activities, such as social media and online search, with Strategic Market Status. This status will lead to these firms facing legally enforceable rules and obligations to ensure they cannot abuse their dominant positions at the expense of consumers and other businesses;
- Giving the Digital Markets Unit powers to proactively address the root causes of competition issues in digital markets. It will impose interventions to inject competition into the market, including obligations on tech firms to report new mergers and give consumers more choice and control over their data.²⁵⁸

Reactions to the proposed digital markets regime

195. There have been concerns expressed to us that slow progress in digital markets regulation could result in other jurisdictions taking the lead. The Coalition for App Fairness raised this as an issue in written evidence, stating that the UK is at risk of becoming “a follower rather than a leader” and falling behind the EU, and that it may need

253 Department for Business, Energy and Industrial Strategy and Department for Digital, Culture, Media and Sport, [Government response to the consultation on a new pro-competition regime for digital markets](#), 6 May 2022

254 Department for Business, Energy and Industrial Strategy and Department for Digital, Culture, Media and Sport, [A new pro-competition for digital markets](#), 20 July 2021, p.8

255 Department for Business, Energy and Industrial Strategy and Department for Digital, Culture, Media and Sport [Government response to the consultation on a new pro-competition regime for digital markets](#), 6 May 2022

256 Slaughter and May, [UK Competition reform proposals - the Governments response - Slaughter and May Insights](#), 18 May 2022

257 Prime Minister’s Office, 10 Downing Street, [Queen’s Speech 2022: background briefing notes](#), 10 May 2022, p. 35

258 Prime Minister’s Office, 10 Downing Street, [Queen’s Speech 2022: background briefing notes](#), 10 May 2022, p. 34–36

to adapt its approach to fit with the EU Digital Markets Act.²⁵⁹ Dr Andrea Coscelli echoed this concern and told us that without legislation being discussed and brought forward in the UK soon, there is a “risk that we will be constrained in terms of our margins to manoeuvre in that space”.²⁶⁰ However, Sunil Patel, Chief Data Officer at PwC, and Neil Ross, Head of Policy at techUK, disagreed with this view, telling us that digital regulation is a complicated area and would take time to get legislation right.²⁶¹ Similarly, Camilla Coverly de Veale, Head of Regulation at the Coalition for a Digital Economy (Coadec), an independent advocacy group for technology-led startups and scale ups in Britain, told us that:

it does not necessarily matter the speed at which the EU and the UK are doing this [diverging], as long as, at the end, we have two systems that cohere and start-ups can scale in the EU”. We have a very highly valued market, but it is small, so start-ups need to scale. They need to go to the EU and to America. We want to maintain a system whereby start-ups are incentivised to launch their products here.²⁶²

196. However, techUK also stated that concerns have been raised that the UK is increasingly being perceived as adding to the regulatory burden in recent years. One member of techUK, in a recent submission to the Competition Appeal Tribunal, said that their external lawyers spent thousands of hours dealing with enforcement orders, while other members have raised concerns about the burden of the overuse of information gathering powers from the CMA, particularly on SMEs. TechUK also stated that factors such as these can deter foreign investment in the UK, as it is a large market and the increased costs of compliance represent an opportunity cost with less budget available for investment in businesses.²⁶³

197. TechUK questioned whether a large range of major changes to policy can be successfully absorbed by the business community at once, including the pro-competition regime for digital markets, the wider reforms to competition and consumer policy by BEIS, as well as a new National Security and Investment Regime, and the impact of the Online Safety Bill.²⁶⁴

198. Coadec told us in written evidence that it is concerned that the DMU and the proposed new pro-competition regime which sits behind it could threaten the UK’s status as the tech capital of Europe. Coadec stated that it is “particularly concerned that the regime hands the CMA significant powers to intervene across digital markets in the UK in a blunt and heavy-handed way which has the potential to damage our innovation ecosystem”.²⁶⁵

199. Coadec believes that the proposed digital markets regime focuses too heavily on taking regulatory enforcement action against the largest digital firms, rather than creating a framework that encourages start-ups to challenge them. It set out that it is also

259 Coalition for App Fairness, ([SBC0015](#))

260 Q118

261 Q163 & 164

262 Q149

263 techUK ([SBC0006](#))

264 techUK ([SBC0006](#))

265 The Coalition for a Digital Economy ([SBC0010](#))

vital that the work of the new DMU does not replicate the work being undertaken by other regulators and that there is a solid basis for communication between UK regulators working across digital markets.²⁶⁶

200. Some witnesses also raised concerns about the risks of increasing digital markets regulation. George Peretz told us that there is “certainly a strong case for specific digital market regulation”. However, he stated that there were constitutional considerations about the powers given to the CMA.²⁶⁷ John Penrose MP, former UK Anti-Corruption Champion, supported these statements adding that there is a “risk with the new Digital Markets Unit is of regulatory creep [...] and of its mandate being gently but inexorably ratcheted up and expanded”. He said that the time and cost for some regulators to make decisions is “thousands of times more expensive and slower compared to what it was 20, 30 or 40 years ago”, and added that:

“The danger is that, unless we have this new set of powers in the Digital Markets Unit very closely ringfenced, and with some very serious checks on what it is allowed to do when it extends its powers and how we whittle them back [...] you are going to end up with creep and, in 40 years’ time, our successors but two are all going to be sitting there thinking, “Why on earth were they not bright enough to have put those things in place?”²⁶⁸

201. Although some risks of increasing digital regulation were raised during the inquiry, the creation of the DMU was supported by most witnesses. Placing the regime in an international context, law firm Allen & Overy regarded the regime as “more flexible, targeted and proportionate” than proposals in other jurisdictions, and when comparing it to EU regulations, said that the regime’s conduct had scope to be more tailored to individual firms.²⁶⁹

202. Commenting on the Government proposals, Neil Ross told us that techUK’s membership is largely welcoming of the regime and favoured the regime over the EU’s proposals for the Digital Markets Act (DMA). He explained that the DMA is seen as a “much blunter instrument” which seeks to assign ‘gatekeepers’ using tools such as market capitalisation, the number of users, and the size of the company, and sets “broad-brush” proposals that apply to all gatekeepers; whereas the UK’s proposals are seen as more evidence-led and tailored to each of the firms that are assigned ‘Strategic Market Status’, and, as a result, “much more likely to take on anti-competitive behaviour in the market itself”.²⁷⁰ However, Mr Ross has also expressed concern over uncertainty surrounding how the proposed UK regime would interact with similar reforms being proposed in the EU.²⁷¹

203. John Penrose MP told us that the CMA’s establishment of the DMU is a “step in the right direction” as the UK needed to quickly upgrade its competition powers to deal with

266 The Coalition for a Digital Economy ([SBC0010](#))

267 Q15

268 Q16

269 Allen & Overy, [New UK pro-competition digital markets regime confirmed by Government](#), 12 May 2022, p. 5

270 Q137 & Q140

271 Q140

an increasingly digital world.²⁷² Similarly, Lord Tyrie told us that the Government has “done the right thing” by establishing the DMU to tackle the issues within digital markets and that there are a number of qualified people to take this work forward.²⁷³

204. Andrea Coscelli, former Chief Executive of the CMA, told us that DMU regulation “will only apply to a handful of very large platforms. Every other business would not see any change”. He told us that regulation by the DMU “will be beneficial to SMEs, because the intent and the purpose is to help them compete on a level playing field”.²⁷⁴

205. Digital markets are global in nature. Therefore, many countries are required to work together to assess the risks and form an approach to tackle anti-competitive behaviour. We congratulate the CMA for its work on the Digital Markets Unit so far and its international leadership on this issue.

206. Legislation is required if the Digital Markets Unit is to have the enforcement and other powers it needs to fulfil its role. We welcome the announcement in the Queen’s Speech that a Draft Digital Markets, Competition and Consumer Bill will be introduced, which will allow opportunities for scrutiny and improvement before a full bill is introduced. However, no Draft Bill has yet been published, and the prospects of legislation reaching the statute book during this Session now look very remote. We draw the Government’s attention to the risks of delay in legislating, and we urge it to publish the Draft Bill before the end of November 2022.

272 Q13

273 Q244

274 Q133

Conclusions and recommendations

The Competition and Markets Authority

1. The CMA is highly regarded by many practitioners and stakeholders, including internationally. In particular, the calibre and expertise of staff has been commended throughout this inquiry. However, we recognise the concerns raised in our inquiry about the level of involvement of the CMA Board and the transparency of its decision making. We therefore call on the CMA to engage its Board more proactively in senior decision-making and to publish more detail about its priority areas of work. (Paragraph 30)
2. *In the context of the Government's stated aim to drive higher economic growth, we believe the CMA could be doing more to help stimulate economic growth in the UK by conducting more market studies in key sectors of the economy and thinking more about the role of competition in driving productivity. We therefore encourage the CMA to consider this part of its remit in deciding on its work priorities and resource allocations going forward.* (Paragraph 31)
3. The CMA is generally well regarded domestically. However, awareness of its work appears to be low in the UK, both amongst the public and amongst businesses. We agree that awareness of the CMA's work and the value which it adds is necessary if it is to have credibility. *We encourage the CMA to be more proactive in explaining to the public how its work has delivered for consumers, both in its annual reporting and its press notices.* (Paragraph 39)
4. *The increase in the CMA's responsibilities and powers is likely to lead to a corresponding increase in its public profile, as businesses and public authorities start to engage with it, or engage more frequently. We believe that would be beneficial and should be embraced by the CMA. We will play a part in increasing accountability of the CMA through enhanced, more regular scrutiny, challenging it when we think necessary.* (Paragraph 40)
5. Whilst we support the increase in powers for the CMA, we also share the concern that there is insufficient oversight of the CMA and its performance. Additional powers must therefore come with additional accountability. *This Committee will be undertaking more work on parliamentary oversight of the CMA, and other regulators, in 2023. In the interim, we require the CMA to proactively report to this Committee on an ongoing basis.* (Paragraph 41)
6. We are encouraged to learn that the CMA is satisfied that it has received adequate resources to deliver its post-Brexit responsibilities, and that it appears to have made a good start in achieving its aims. However, the incoming Chair and Chief Executive will face major challenges in managing its expansion and in the recruitment of staff in specialist fields, on which the CMA depends heavily. We look to support the CMA in its efforts to carry out its new responsibilities. (Paragraph 54)

Competition and Subsidy Control

7. *Additional compliance costs will be incurred by businesses that trade in both the EU and the UK, assuming some degree of regulatory divergence over time. We therefore call on the CMA to conduct a short economic analysis, to be sent to this Committee no later than September 2024, assessing the cost to business of trading in both the EU and the UK and its impact on competition. (Paragraph 73)*
8. *We believe that the non-binding nature of the CMA's role when advising on subsidies which are referred to its Subsidy Advice Unit will be sufficient in the majority of cases. The Government should ensure that the CMA has the resources necessary for the Subsidy Advice Unit to advise public authorities effectively, in a timely fashion and so as to avoid any misuse of subsidy funding. (Paragraph 84)*
9. *Public authorities will need to update their understanding of the rules of the new subsidy control regime when it comes into force in late 2022. This includes delivery of subsidies from the UK Shared Prosperity Fund, where public authorities will need to consider the new subsidy control regime rules. (Paragraph 102)*
10. *Although the UK Government has published further guidance on the implementation of subsidies, there is still a lack of detailed information in several areas of subsidy control guidance, which may cause uncertainty for public authorities who will need to seek advice on the new subsidy control regime after implementing the interim regime. (Paragraph 103)*
11. *The UK Shared Prosperity Fund is designed differently to its predecessor EU schemes. How subsidies are allocated, therefore, is crucial to ensuring the most effective use of public funds. (Paragraph 104)*
12. *However, public authorities are in limbo until the Government publishes final guidance on the subsidy control regime. The UK Government needs to end this uncertainty by following the Scottish Government, which published guidance in September 2022, and publishing final guidance without delay. Only then will public authorities be in a position to make awarding decisions on subsidies with confidence and to prepare bids for funding from the UK Shared Prosperity Fund. (Paragraph 105)*
13. *The Government should update the Committee within one year of implementation on the performance of the new subsidy control regime. (Paragraph 106)*

Consumer Policy

14. *We therefore request that the Government gives an early indication of the extent to which it expects to use its power under Clause 17 of the Retained EU Law (Revocation and Reform) Bill as introduced, and of the likely volume and rate of flow of draft legislative reform orders, so that the Committee can assess whether its working practices will need to change substantially. At the very least, the Committee would need early warning from the Government of each impending draft legislative reform order, in order to ensure effective and prompt scrutiny. (Paragraph 111)*
15. *Weak competition and consumer policy will lead to detriment for consumers and worse economic outcomes, particularly for the most vulnerable in society. We*

encourage Ministers to build upon existing UK consumer law and to refrain from fundamental changes to it. Whilst UK consumer law is comprehensive, consumers still have low levels of understanding of their rights and enforcement is weak. We therefore call on Ministers to give consumer enforcement agencies additional powers and resources to improve their enforcement of consumer rights, in the interests of consumers and competition in markets. We also encourage the CMA to formally collaborate with consumer and competition law agencies in regulated sectors to reduce consumer detriment. (Paragraph 120)

16. The COVID-19 pandemic has exacerbated the negative effects of weak competition in some industries for consumers. Consumers have increasingly experienced rip-offs and asymmetry of information. (Paragraph 127)
17. We commend the CMA for its COVID-19 Taskforce which was effective in improving consumer rights in several industries. However, we believe that this taskforce was disbanded prematurely. *We ask the CMA to establish an horizon scanning unit that pro-actively engages on consumer law enforcement, as the COVID-19 Taskforce did following an assessment of the effectiveness of the COVID-19 Taskforce.* (Paragraph 128)
18. We welcome the Government's recent proposals to increase the CMA's ability to fine businesses that abuse their market position, by reducing the minimum turnover threshold for immunity from financial penalties from £50 million to £20 million and imposing penalties of up to 10% of global annual turnover in instances where consumer protection laws are broken. (Paragraph 139)
19. We believe that lower thresholds and higher penalties are necessary so that bigger businesses which break the rules do not see financial penalties as a small business cost. (Paragraph 140)
20. We are concerned that the Draft Digital Markets, Competition and Consumer Bill is yet to be published, not least because a period of pre-legislative scrutiny is envisaged, and we therefore call on Ministers to publish the draft bill as soon as possible. (Paragraph 141)
21. We support the idea that there should be more accessible support for consumers across the UK. We encourage the development of ombudsman services, including in sectors not currently covered by an ombudsman, as an independent and trusted arbiter that consumers understand and can engage with. (Paragraph 147)
22. *Regulators and other relevant stakeholders should invest in better online arbitration systems that are quicker and cheaper, to speed up enforcement of minor consumer rights breaches. These investments should include better internal digital case management systems and other options for consumers who are unable to access online services.* (Paragraph 148)
23. We believe that UK consumers are experiencing significant consumer detriment as a result of the behaviour of a number of airlines. We agree with the Transport Committee that the CAA's current powers are not adequate to protect consumers' rights in the airline sector. (Paragraph 156)

24. We support the Transport Committee's recommendations in its *UK aviation: reform for take-off* Report of the 2021–22 Session, on the need for the Civil Aviation Authority to have the power to impose financial penalties on airlines which fail to refund customers when required to do so by law. *We recommend that the BEIS Department considers the enforcement powers of sectoral regulators more widely, as part of our recommendations in this report on its future work with the CMA, as the primary enforcer of consumer law in the UK.* (Paragraph 157)

Digital Markets

25. We acknowledge that the UK approach to digital markets regulation will be different to that of the EU. However, we welcome EU efforts to increase competition and ensure a level playing field for all digital companies. We support updates to EU law that include designating gatekeepers, setting rules for firms, and sanctioning those companies which abuse their dominant position. (Paragraph 166)
26. *We agree with the recommendations of the Joint Committee on the Online Safety Bill and the House of Lords Communications and Digital Committee, that the Digital Regulation Co-operation Forum (DRCF) should have a more formal status and clearer lines of accountability, given the increasingly important role it plays in decision making between regulators. However, as the DRCF does not require formal powers, and funding is allocated by the member regulators, we do not believe that a statutory underpinning is required.* (Paragraph 179)
27. *However, we do believe that the Digital Regulation Co-operation Forum's accountability arrangements need to be updated. Until such time as these arrangements are formally agreed, the DRCF should proactively report to this Committee about the delivery of its objectives and any key decisions that it takes.* (Paragraph 180)
28. *There are clear examples of market dominance in digital markets globally which have been well documented. We heard from witnesses, and during our visit to the US, strong evidence of abuses of market dominance which warrant intervention. We encourage the CMA to investigate these instances closely and collaborate internationally to promote further competition between digital firms. We also call on the CMA to continue with its market studies and for the Government to continue to ensure that the CMA is funded to carry out this work.* (Paragraph 186)
29. Digital markets are global in nature. Therefore, many countries are required to work together to assess the risks and form an approach to tackle anti-competitive behaviour. We congratulate the CMA for its work on the Digital Markets Unit so far and its international leadership on this issue. (Paragraph 205)
30. Legislation is required if the Digital Markets Unit is to have the enforcement and other powers it needs to fulfil its role. We welcome the announcement in the Queen's Speech that a Draft Digital Markets, Competition and Consumer Bill will be introduced, which will allow opportunities for scrutiny and improvement before a full bill is introduced. However, no Draft Bill has yet been published, and the prospects of legislation reaching the statute book during this Session now look very remote. We draw the Government's attention to the risks of delay in legislating, and we urge it to publish the Draft Bill before the end of November 2022. (Paragraph 206)

Annex

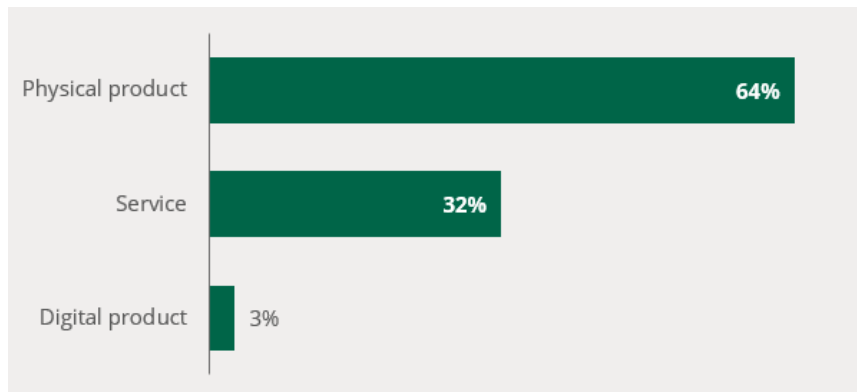
Public survey on consumer rights and protections

1) On 25 January 2022, we launched an online survey welcoming the public's views on consumer rights and protections, as part of this inquiry. The survey received 1,101 responses and closed on 10 February 2022.²⁷⁵ The survey was promoted through the Select Committee Engagement Team and through the Committee's social media. It also appeared on the Money Saving Expert weekly email on 8 February 2022 and was shared on Twitter by Which?.

2) We acknowledge that respondents are from a self-selecting pool, therefore our data may not be appropriate to make assumptions or generalisations about the experiences of the wider population.

Nearly two-in-three respondents used consumer rights for physical products

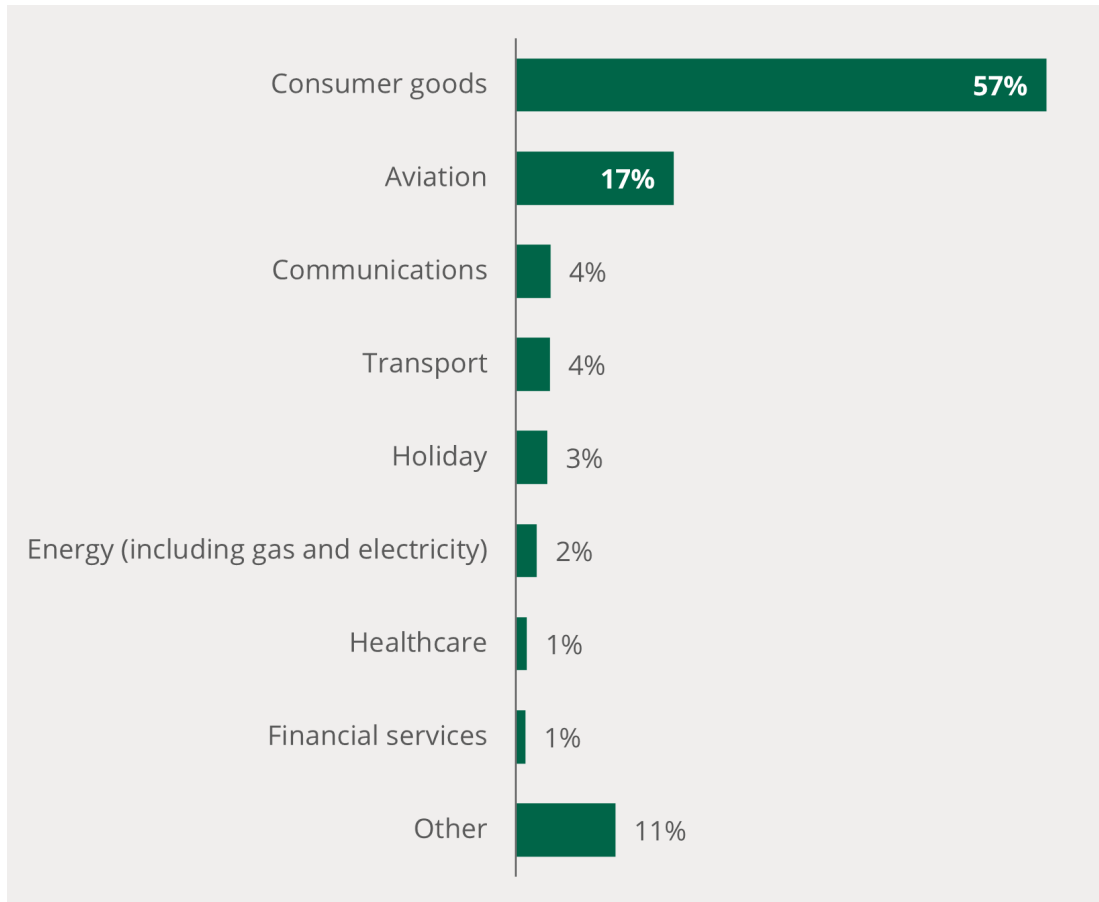
Q1. When you used your consumer rights, was it about:



More than half of respondents had issues with consumer goods

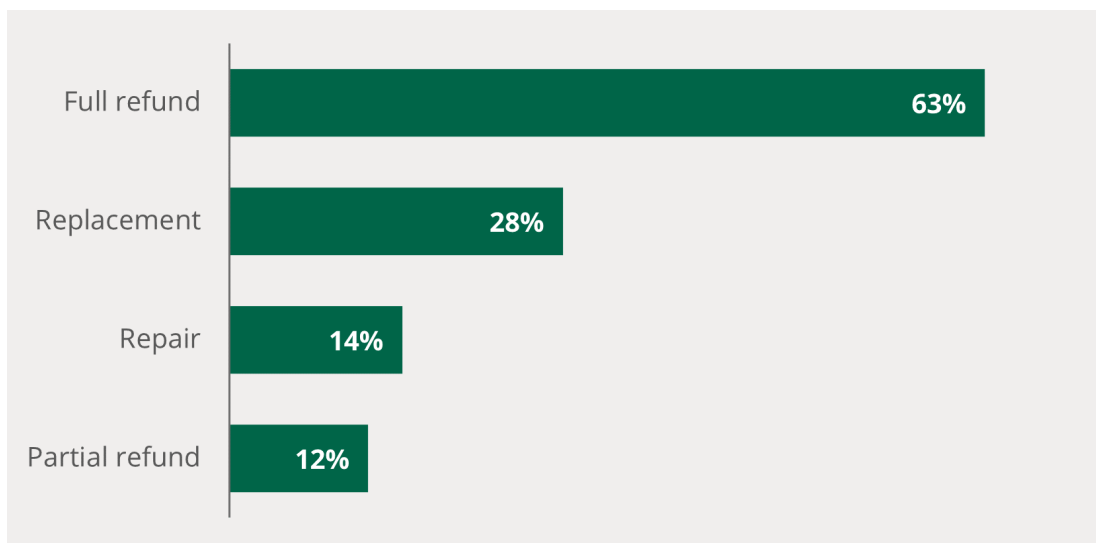
275 [Business Committee seeks public's views on consumer rights](#), 25 January 2022

Q2: Which sector did your issue relate to?



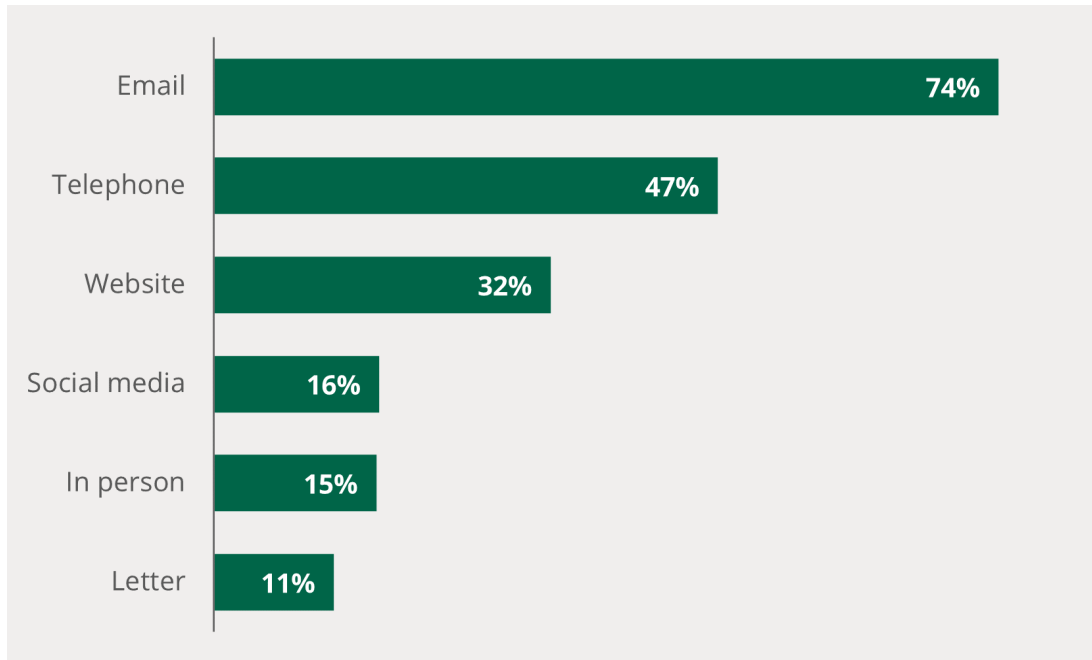
Respondents were most likely to want to a full refund

Q3: What outcome or outcomes were you looking for? Tick all that apply.



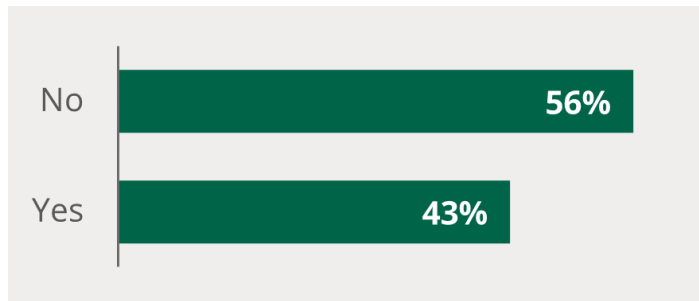
Almost three quarters of respondents communicated with the seller via email and almost half communicated via telephone.

Q4: How did you communicate with the seller? Tick all that apply.



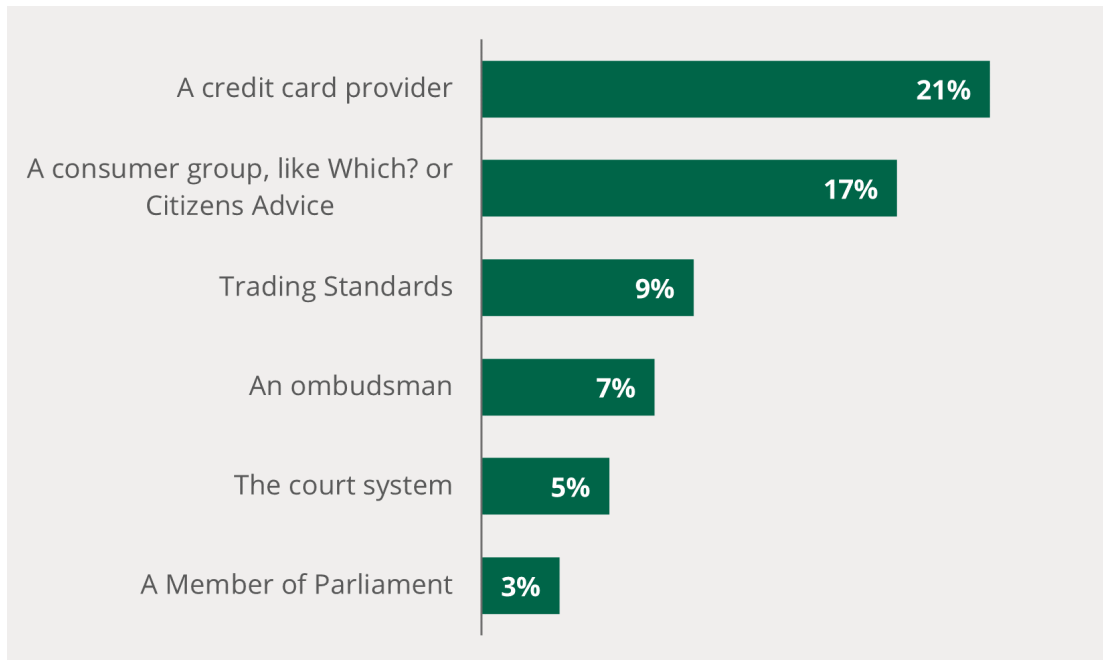
Just over half of respondents did not achieve an outcome directly with the seller

Q5: Did you achieve your outcome by working directly with the seller?



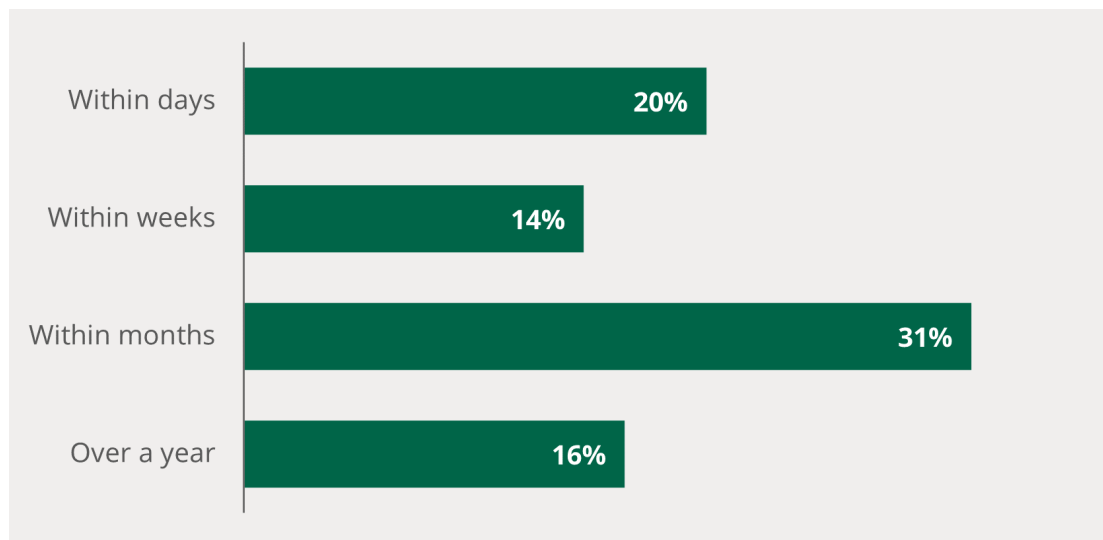
Credit card providers, followed by consumer groups, were the most used organisation or official to help resolve consumer issues among our respondents.

Q6: Did you go to any of these organisations or officials for help resolving the issue? Tick all that apply.



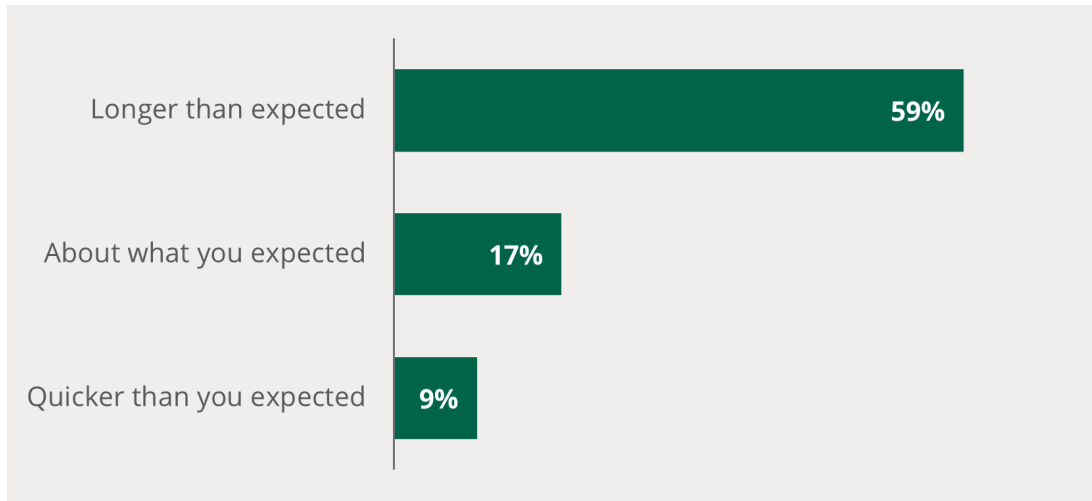
A third of our respondents received an outcome from the seller within months.

Q7: How quickly did you get what you wanted from the seller?



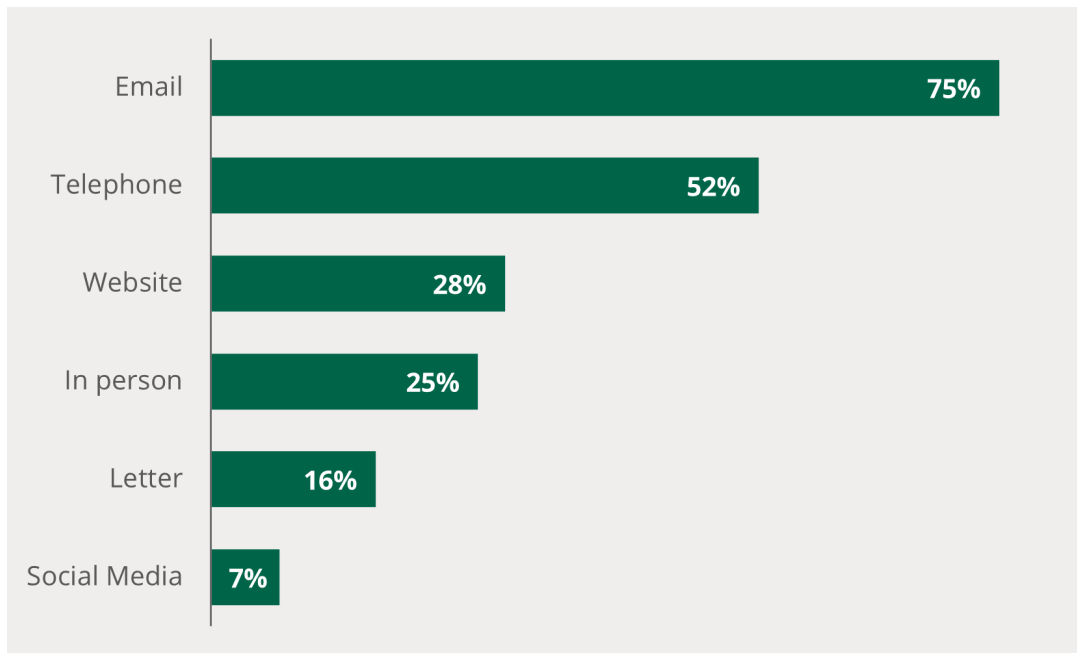
For the majority of respondents, the timescale in which they received an outcome from the seller was longer than expected.

Q8: Was this timescale:



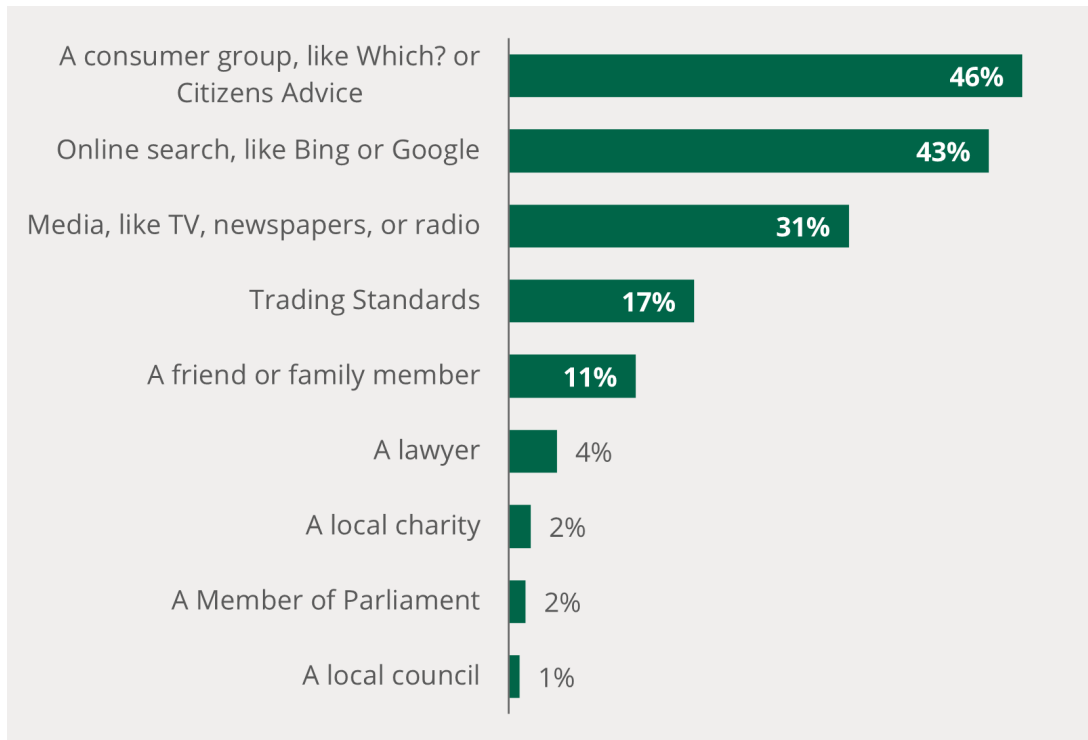
In the future, most respondents would want to communicate with the seller via email (75%) and telephone (52%).

Q9: In the future, how would you prefer to communicate with the seller while resolving any consumer rights issues? Tick all that apply.



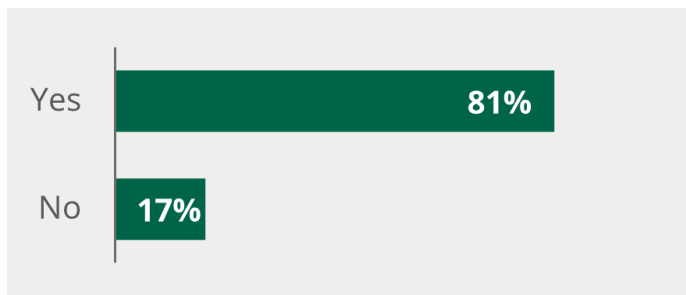
Consumer groups, online search, and media were the most used resources for respondents to learn about their consumer rights.

Q10: Which of the below resources, if any, have helped you learn about your consumer rights? Tick all that apply.



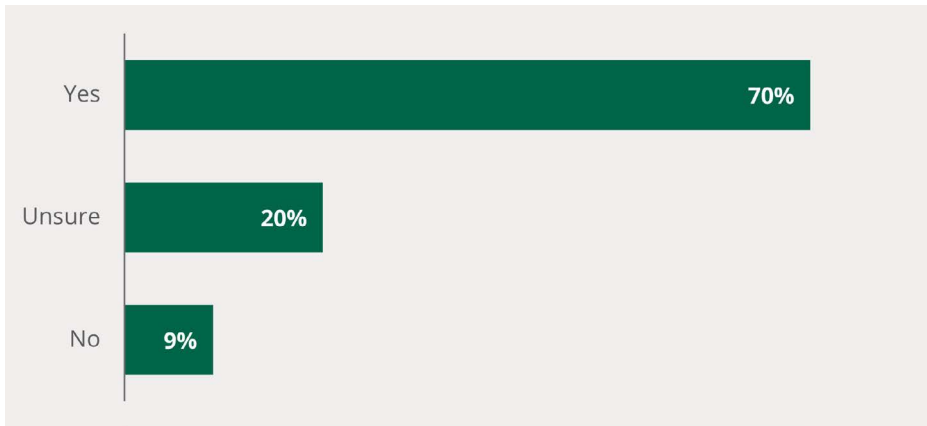
The vast majority of respondents were aware that credit card providers can issue refunds directly.

Q11: Are you aware that credit card providers can issue refunds directly?



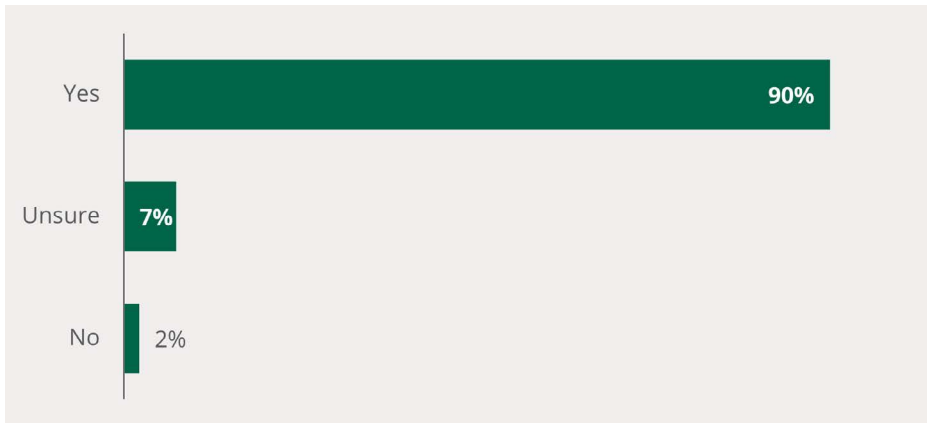
Almost three-quarters of respondents thought they needed more consumer rights than they currently have.

Q12: Do you think you need more consumer rights than you currently have?



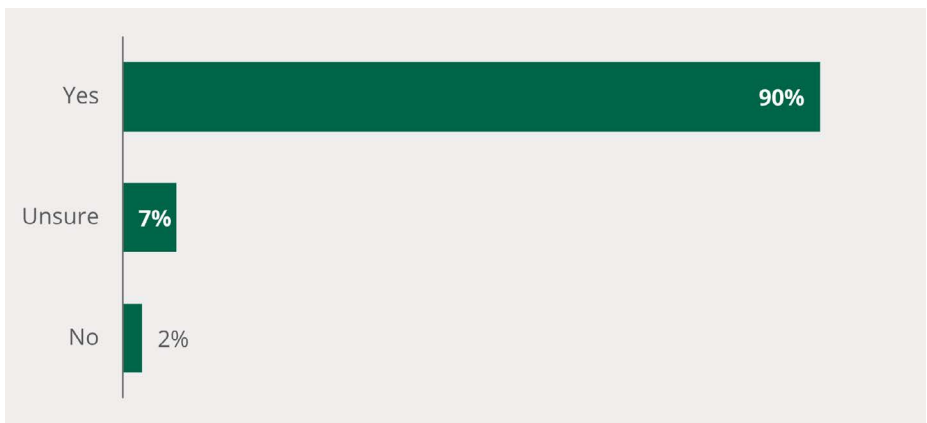
90% of respondents thought that it should be easier to use their consumer rights.

Q13: Do you think it should be easier to use your consumer rights?



90% of respondents thought that the Government needs to make it easier for people to use their consumer rights.

Q14: Do you think the Government needs to make it easier for people to use their consumer rights?



Formal Minutes

Tuesday 11 October 2022

Members present:

Darren Jones, in the Chair

Andy McDonald

Charlotte Nichols

Mark Pawsey

Post-pandemic economic growth: state aid and post-Brexit competition policy

Draft Report (*Post-pandemic economic growth: state aid and post-Brexit competition policy*), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 206 read and agreed to.

Summary agreed to.

Annex agreed to.

Resolved, That the Report be the Fourth Report of the Committee to the House

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

Adjournment

Adjourned till Tuesday 25 October at 2.30pm

Witnesses

The following witnesses gave evidence. Transcripts can be viewed on the [inquiry publications page](#) of the Committee's website.

Tuesday 02 November 2021

John Penrose MP, Prime Minister's Anti-Corruption Champion, Home Office; **George Peretz KC**, Joint Chair, Joint Working Party of UK Bars and Law Societies on Competition Law, Joint Convenor, UK State Aid Law Association

[Q1–47](#)

Tuesday 30 November 2021

Professor Sir John Vickers, Professor of Economics, Oxford University, Former Chair, Office of Fair Trading

[Q48–67](#)

Nicole Robins, Partner, Oxera; **Isabel Taylor**, Partner, Slaughter and May; **James Webber**, Partner, Antitrust, Shearman & Sterling LLP

[Q68–107](#)

Tuesday 01 February 2022

Andrea Coscelli, Chief Executive, Competition and Markets Authority; **Dame Melanie Dawes**, Chief Executive, Ofcom, Chair, Digital Regulation Cooperation Forum

[Q108–135](#)

Neil Ross, Head of Policy, techUK; **Camilla de Coverly Veale**, Head of Regulation, The Coalition for a Digital Economy; **Sunil Patel**, Chief Data Officer, PwC

[Q136–167](#)

Tuesday 01 March 2022

Rocio Concha, Director of Policy and Advocacy and Chief Economist, Which?; **Matthew Upton**, Director of Policy, Citizens Advice; **Matthew Vickers**, CEO and Chief Ombudsman, Ombudsman Services; **Steve Ruddy**, Chair of the Board, Chartered Trading Standards Institute

[Q168–227](#)

Tuesday 26 April 2022

Rt Hon Lord Andrew Tyrie, Former Chair, Competition and Markets Authority

[Q228–252](#)

Paul Scully MP, Minister for Small Business, Consumers and Labour Markets, Department for Business, Energy and Industrial Strategy; **Niall Mackenzie**, Director, Consumers and Competition, Department for Business, Energy and Industrial Strategy; **Alesha de Freitas**, Deputy Director, Competition Policy, Department for Business, Energy and Industrial Strategy

[Q253–301](#)

Published written evidence

The following written evidence was received and can be viewed on the [inquiry publications page](#) of the Committee's website.

SBC numbers are generated by the evidence processing system and so may not be complete.

- 1 Association of Investment Companies ([SBC0005](#))
- 2 McKenzie, Baker ([SBC0008](#))
- 3 Coalition for App Fairness ([SBC0015](#))
- 4 Community land trusts ([SBC0013](#))
- 5 Convention of Scottish Local Authorities (COSLA) ([SBC0002](#))
- 6 Department for Business, Energy & Industrial Strategy ([SBC0011](#))
- 7 Ornaghi, Dr Carmine (Professor in Economics, University of Southampton); and Dr Tong, Jian (Lecturer in Economics, University of Southampton) ([SBC0003](#))
- 8 Pact ([SBC0007](#))
- 9 Panteli, Mr Christopher ([SBC0001](#))
- 10 Society of Motor Manufacturers and Traders (SMMT) ([SBC0012](#))
- 11 techUK ([SBC0006](#))
- 12 The Coalition for a Digital Economy ([SBC0010](#))
- 13 UK Research and Innovation (UKRI) ([SBC0014](#))
- 14 Which? ([SBC0004](#))

List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the publications page of the Committee's website.

Session 2022–23

Number	Title	Reference
1st	Pre-appointment hearing with the Government's preferred candidate for Chair of the Competition and Markets Authority	HC 523
2nd	Draft Legislative Reform (Provision of Information etc. relating to disabilities) Order 2022	HC 522
3rd	Energy pricing and the future of the Energy Market	HC 236
1st Special	Decarbonising heat in homes: Government Response to the Committee's Seventh Report of 2021–22	HC 208
2nd Special	Energy pricing and the future of the energy market: Responses to the Committee's Third Report of Session 2022–23	HC 761

Session 2021–22

Number	Title	Reference
1st	Post-pandemic economic growth: Industrial policy in the UK	HC 385
2nd	Climate Assembly UK: where are we now?	HC 546
3rd	Post-pandemic economic growth: Levelling up	HC 566
4th	Liberty Steel and the future of the UK steel Industry	HC 821
5th	Pre-legislative scrutiny: draft Downstream Oil Resilience Bill	HC 820
6th	Pre-appointment hearing of the Government's preferred candidate for Chair of the Financial Reporting Council	HC 1079
7th	Decarbonising heat in homes	HC 1038
8th	Post Office and Horizon - Compensation: interim report	HC 1129
9th	Revised (Draft) National Policy Statement for Energy	HC 1151
10th	Draft Legislative Reform (Renewal of National Radio Multiplex Licences) Order 2022	HC 1199

Session 2019–21

Number	Title	Reference
1st	My BEIS inquiry: proposals from the public	HC 612
2nd	The impact of Coronavirus on businesses and workers: interim pre-Budget report	HC 1264

Number	Title	Reference
3rd	Net Zero and UN Climate Summits: Scrutiny of Preparations for COP26 – interim report	HC 1265
4th	Pre-appointment hearing with the Government’s preferred candidate for the Chair of the Regulatory Policy Committee	HC 1271
5th	Uyghur forced labour in Xinjiang and UK value chains	HC 1272
6th	Mineworkers’ Pension Scheme	HC 1346