

# DIGITAL MARKETS, COMPETITION AND CONSUMERS BILL

## EXPLANATORY NOTES ON LORDS AMENDMENTS

### What these notes do

These Explanatory Notes relate to the Lords Amendments to the Digital Markets, Competition and Consumers Bill as brought from the House of Lords on 27 March 2024.

- These Explanatory Notes have been prepared by the Department for Business and Trade and the Department for Science, Innovation and Technology in order to assist the reader of the Bill and the Lords Amendments and to help inform debate on the Lords Amendments. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes, like the Lords amendments themselves, refer to HL Bill 12, the Bill as first printed for the Lords.
- These Explanatory Notes need to be read in conjunction with the Lords amendments and the text of the Bill. They are not, and are not meant to be, a comprehensive description of the Lords amendments.
- Lords Amendments 1 to 8, 10, 11, 14 to 18, 20 to 26, 29, 30, 33 to 37, 39 to 103, and 105 to 148 were tabled in the name of the Minister.
- Lords Amendments 9 and 19 were tabled by Lord Faulks and were opposed by the Government.
- Lords Amendments 12, 13, 26, 27, 28, 31 and 32 were tabled by Baroness Jones of Whitchurch and were opposed by the Government.
- Lords Amendment 38 was tabled by Lord Lansley and was opposed by the Government.
- Lords Amendment 104 was tabled by Lord Moynihan and was opposed by the Government.
- In the following Commentary, an asterisk(\*) appears in the heading of any paragraph that deals with a non-Government amendment

## Table of contents

Commentary on Lords amendments .....	8
Lords Amendments to Part 1: Digital Markets.....	8
Lords Amendments to Clause 6: Position of strategic significance.....	8
Lords Amendment 1.....	8
Lords Amendments to Clause 11: Procedure relating to SMS investigation .....	8
Lords Amendment 2.....	8
Lords Amendment 3.....	8
Lords Amendments to Clause 12: Closing an initial SMS investigation without a decision.....	8
Lords Amendment 4.....	8
Lords Amendments to Clause 14: Outcome of SMS investigations.....	9
Lords Amendment 5.....	9
Lords Amendments to Clause 15: Notice requirements: decisions about whether to designate ..	9
Lords Amendment 6 and 7 .....	9
Lords Amendment 8.....	9
Lords Amendments to Clause 19: Power to impose conduct requirements .....	9
Lords Amendment 9* .....	9
Lords Amendments to Clause 26: Power to begin a conduct investigation .....	9
Lords Amendment 10.....	9
Lords Amendments to Clause 28: Closing a conduct investigation without making a finding .....	10
Lords Amendment 11.....	10
Lords Amendments to Clause 29: Countervailing benefits exemption.....	10
Lords Amendment 12* .....	10
Lords Amendment 13* .....	10
Lords Amendments to Clause 30: Notice of findings .....	10
Lords Amendment 14.....	10
Lords Amendments to Clause 31: Enforcement orders .....	10
Lords Amendment 15.....	10
Lords Amendments to Clause 32: Interim enforcement orders .....	10
Lords Amendment 16.....	10
Lords Amendments to Clause 34: Revocation of enforcement orders.....	11
Lords Amendment 17.....	11
Lords Amendments to Clause 38: Power to adopt final offer mechanism .....	11
Lords Amendment 18.....	11

Lords Amendment to Clause 46: Power to make pro-competition interventions.....	11
Lords Amendment 19* .....	11
Lords Amendments to Clause 48: Procedure relating to PCI investigations.....	12
Lords Amendment 20.....	12
Lords Amendments to Clause 51: Pro-competition orders.....	12
Lords Amendment 21 .....	12
Lords Amendments to Clause 81: Privileged communications.....	12
Lords Amendment 22.....	12
Lords Amendments to Clause 88: Amount of penalties under section 87 .....	12
Lords Amendment 23 to 25.....	12
Lords Amendments to Clause 89: Procedure and appeals etc .....	13
Lords Amendments 26* to 28* .....	13
Lords Amendments to Clause 101: Rights to enforce requirements of this Part .....	13
Lords Amendment 29.....	13
Lords Amendments to Clause 102: Treatment of CMA breach decisions etc.....	13
Lords Amendments 30 .....	13
Lords Amendments to Clause 103: Applications for review etc .....	13
Lords Amendments 31* and 32* .....	13
Lords Amendments to Clause 107: Coordination with relevant regulators .....	14
Lords Amendment 33.....	14
Lords Amendments to Clause 109: Information sharing .....	14
Lords Amendment 34.....	14
Lords Amendments to Clause 110: Power to charge a levy.....	14
Lords Amendment 35.....	14
Lords Amendment 36.....	14
Lords Amendments to Clause 113: Publication of notices.....	14
Lords Amendment 37.....	14
Lords Amendments to Clause 114: Guidance .....	14
Lords Amendment 38* .....	14
Lords Amendments after Clause 115 .....	14
Lords Amendment 39.....	14
Lords Amendment to Clause 117: General interpretation .....	15
Lords Amendment 40.....	15
Lords Amendments to Part 2: Competition .....	16

Lords Amendments to Clause 126: Use of damages-based agreements in opt-out collective proceedings .....	16
Lords Amendments 41 .....	16
Lords Amendments after Clause 129 .....	16
Lords Amendment 42 .....	16
Lords Amendments to Clause 130: Mutual agreements to extend time-limits: duty to make reference cases .....	16
Lords Amendment 43 .....	16
Lords Amendments to Clause 131: Mutual agreements to extend time-limits: public interest cases .....	16
Lords Amendment 44 .....	16
Lords Amendments to Part 3: Enforcement of Consumer Protection Law .....	17
Lords Amendments to Clause 157: Enforcement orders: requirement to pay monetary penalty	17
Lords Amendments 45 and 46 .....	17
Lords Amendments to Clause 159: Applications .....	17
Lords Amendments 47 to 50 .....	17
Lords Amendments to Clause 160: Online interface orders .....	17
Lords Amendments 51 to 53 .....	17
Lords Amendments to Clause 161: Interim online interface orders .....	18
Lords Amendments 54 to 56 .....	18
Lords Amendments to Clause 165: Consumer protection orders or undertakings to court: further proceedings .....	18
Lords Amendments 57 and 58 .....	18
Lords Amendments to Clause 166: Undertakings to public designated enforcers: further proceedings .....	18
Lords Amendments 59 and 60 .....	18
Lords Amendments to Clause 167: Monetary penalties under sections 165 and 166: amount ..	18
Lords Amendment 61 .....	18
Lords Amendments to Clause 168: Notification requirements: applications .....	19
Lords Amendments 62 to 66 .....	19
Lords Amendments to Clause 189: Monetary penalties under section 188: amount .....	19
Lords Amendment 67 .....	19
Lords Amendments to Clause 192: Monetary penalties under section 191: amount .....	19
Lords Amendment 68 .....	19
Lords Amendments to Clause 202: Information to accompany orders or notices imposing monetary penalties .....	19

Lords Amendments 69 and 70 .....	19
Lords Amendments to Part 4: Consumer Rights and Disputes .....	21
Lords Amendments to Clause 228: Omission of material information from invitation to purchase .....	21
Lords Amendments 71 to 73 .....	21
Lords Amendments to Clause 231: Rights of redress: further provision .....	21
Lords Amendments 74 and 75 .....	21
Lords Amendments to Clause 235: Offences .....	22
Lords Amendment 76 .....	22
Lords Amendments to Clause 249: Consequential amendments etc relating to this Chapter.....	22
Lords Amendment 77 .....	22
Lords Amendments to Clause 253: Excluded contracts .....	22
Lords Amendment 78 .....	22
Lords Amendments to Clause 257: Content and timing of reminder notices .....	22
Lords Amendment 79 .....	22
Lords Amendments to Clause 258: Arrangement for consumers to exercise right to end contract .....	22
Lords Amendments 80 and 81 .....	22
Lords Amendments to Clause 261: Right to cancel for breach of implied term .....	22
Lords Amendment 82 .....	22
Lords Amendments to Clause 262: Right to cancel during cooling-off period .....	23
Lords Amendment 83 .....	23
Lords Amendments to Clause 265: Cancellation of subscription contract: further provision.....	23
Lords Amendments 84 and 85 .....	23
Lords Amendments to Clause 273: Application of this Chapter .....	23
Lords Amendment 86 .....	23
Lords Amendment 87 .....	23
Lords Amendments to Clause 283: Insolvency protection requirement .....	24
Lords Amendment 88 .....	24
Lords Amendments to Clause 285: Trust arrangements.....	24
Lords Amendments 89 .....	24
Lords Amendments to Clause 295: Determination of applications for accreditation or variation of accreditation .....	24
Lords Amendments 90 and 91 .....	24
Lords Amendments to Clause 296: Revocation or suspension of accreditations etc .....	25

Lords Amendment 92 .....	25
Lords Amendments 93 to 100 .....	25
Lords Amendments to Clause 302: ADR information directions .....	25
Lords Amendment 101 .....	25
Lords Amendments to Clause 303: Disclosure of ADR information by the Secretary of State.....	25
Lords Amendment 102 .....	25
Lords Amendments to Clause 304: Meaning of “ADR information” and other terms in sections 301 to 303 .....	26
Lords Amendment 103 .....	26
Lords Amendments after Clause 308 .....	26
Lords Amendment 104* .....	26
Lords Amendments to Part 6: General.....	27
Lords Amendments to Clause 328 .....	27
Lords Amendment 105 .....	27
Lords Amendments after Clause 328 .....	27
Lords Amendment 106 .....	27
Lords Amendments after Clause 329 .....	27
Lords Amendment 107 .....	27
Lords Amendments after Clause 330 .....	27
Lords Amendment 108 .....	27
Lords Amendments to Clause 331: Power to make further consequential provision .....	27
Lords Amendments 109 and 110 .....	27
Lords Amendments to Clause 332: Regulations .....	28
Lords Amendment 111 .....	28
Lords Amendments to Clause 334: Commencement .....	28
Lords Amendment 112 .....	28
Lords Amendment 113 .....	28
Lords Amendment 114 .....	28
Lords Amendments to Schedule 4: Relevant and special merger situations .....	29
Lords Amendment 115 .....	29
Lords Amendments to Schedule 5: Mergers: fast-track references under sections 22 and 33 of EA 2002.....	29
Lords Amendment 116 .....	29
Lords Amendments after Schedule 6 .....	29
Lords Amendment 117 .....	29

Lords Amendments to Schedule 9: Civil penalties etc in connection with competition investigations .....	33
Lords Amendments 118 and 119 .....	33
Lords Amendment 120.....	33
Lords Amendment 121.....	34
Lords Amendments to Schedule 10: Civil penalties etc in connection with breaches of remedies .	34
Lords Amendments 122 to 124.....	34
Lords Amendment 125.....	34
Lords Amendment 126.....	34
Lords Amendment 127.....	34
Lords Amendments to Schedule 12: Service and extra-territoriality of notices under CA 1998 and EA 2002 .....	35
Lords Amendment 128.....	35
Lords Amendments to Schedule 13: Orders and regulations under CA 1998 and EA 2002 .....	35
Lords Amendment 129.....	35
Lords Amendment 130.....	36
Lords Amendment 131.....	36
Lords Amendments 132 to 134.....	36
Lords Amendments to Schedule 16: Investigatory powers .....	36
Lords Amendments 135 to 138.....	36
Lords Amendments to Schedule 17: Part 3: minor and consequential amendments .....	37
Lords Amendment 139.....	37
Lords Amendments to Schedule 19: Commercial practices which are in all circumstances considered unfair .....	37
Lords Amendment 140.....	37
Lords Amendments after Schedule 19.....	38
Lords Amendment 141.....	38
Lords Amendments to Schedule 20: Excluded contracts.....	39
Lords Amendments 142 to 144.....	39
Lords Amendments to Schedule 25: Chapter 4 of Part 4: Consequential Amendments etc.....	39
Lords Amendments 145 and 146 .....	39
Lords Amendments to Schedule 26: Provision of investigative assistance to overseas regulators .	39
Lords Amendment 147.....	39
Lords Amendments after Schedule 27 .....	40
Lords Amendment 148.....	40

Financial Effects of Lords Amendments ..... 41



# Commentary on Lords amendments

## Lords Amendments to Part 1: Digital Markets

### Lords Amendments to Clause 6: Position of strategic significance

#### Lords Amendment 1

- 1 Lords Amendment 1 would remove the power for the Secretary of State to amend by regulations the position of strategic significance conditions.

### Lords Amendments to Clause 11: Procedure relating to SMS investigation

#### Lords Amendment 2

- 2 Lords Amendment 2 would require the Competition and Markets Authority (CMA) to publish a Strategic Market Status (SMS) investigation notice that is provided to the undertaking under investigation. This replaces the requirement to provide a statement summarising the notice. Amendment 2 is part of a group of amendments that would require the CMA to publish the notice issued to the relevant designated undertaking, subject to necessary redactions for confidentiality reasons (see Amendment 37).

#### Lords Amendment 3

- 3 Lords Amendment 3 would require the CMA to give a copy of an SMS investigation notice provided to the undertaking under investigation to the Financial Conduct Authority, the Office of Communications, the Information Commissioner's Office, the Bank of England and the Prudential Regulation Authority. Amendment 3 is part of a group of amendments that would require the CMA to publish the notice issued to the relevant designated undertaking, subject to necessary redactions for confidentiality reasons (see Amendment 37).

### Lords Amendments to Clause 12: Closing an initial SMS investigation without a decision

#### Lords Amendment 4

- 4 Amendment 4 would require the CMA to publish a notice that is provided to an undertaking under investigation when closing initial SMS investigations without a decision. This replaces the requirement to provide a statement summarising the notice. Amendment 4 is part of a group of amendments that would require the CMA to publish the notice issued to the relevant designated undertaking, subject to necessary redactions for confidentiality reasons (see Amendment 37).

## **Lords Amendments to Clause 14: Outcome of SMS investigations**

### **Lords Amendment 5**

- 5 Lords Amendment 5 would require the CMA to publish an SMS decision notice that is provided to the undertaking under investigation. This replaces the requirement to provide a statement summarising the notice. Amendment 5 is part of a group of amendments that would require the CMA to publish the notice issued to the relevant designated undertaking, subject to necessary redactions for confidentiality reasons (see Amendment 37).

## **Lords Amendments to Clause 15: Notice requirements: decisions about whether to designate**

### **Lords Amendment 6 and 7**

- 6 Lords Amendment 6 would require the CMA to give reasons in the SMS decision notice when it decides not to designate an undertaking following an initial SMS investigation. Lords Amendment 7 is a minor and technical amendment consequential on Amendment 6.

### **Lords Amendment 8**

- 7 Lords Amendment 8 would require the CMA to publish a revised SMS decision notice that is provided to the designated undertaking. This replaces the requirement to provide a statement summarising the notice. Amendment 8 is part of a group of amendments that would require the CMA to publish the notice issued to the relevant designated undertaking, subject to necessary redactions for confidentiality reasons (see Amendment 37).

## **Lords Amendments to Clause 19: Power to impose conduct requirements**

### **Lords Amendment 9\***

- 8 Lords Amendment 9\* would require that conduct requirements imposed on a designated undertaking by the CMA need to be “appropriate”, not “proportionate”.

## **Lords Amendments to Clause 26: Power to begin a conduct investigation**

### **Lords Amendment 10**

- 9 Lords Amendment 10 would require the CMA to publish a conduct investigation notice that is provided to the undertaking under investigation. This replaces the requirement to provide a statement summarising the notice. Amendment 10 is part of a group of amendments that would require the CMA to publish the notice issued to the relevant designated undertaking, subject to necessary redactions for confidentiality reasons (see Amendment 37).

## **Lords Amendments to Clause 28: Closing a conduct investigation without making a finding**

### **Lords Amendment 11**

- 10 Lords Amendment 11 would require the CMA to publish a notice closing a conduct investigation without a decision. This replaces the requirement to provide a statement summarising the notice. Amendment 11 is part of a group of amendments that would require the CMA to publish the notice issued to the relevant designated undertaking, subject to necessary redactions for confidentiality reasons (see Amendment 37).

## **Lords Amendments to Clause 29: Countervailing benefits exemption**

### **Lords Amendment 12\***

- 11 Lords Amendment 12 would remove the requirement that, for the countervailing benefits exemption to apply, “the [consumer] benefits could not be realised without the [anti-competitive] conduct”.

### **Lords Amendment 13\***

- 12 Lords Amendment 13 would insert the word “indispensable”, so that, for the countervailing benefits exemption to apply, “the [anti-competitive] conduct [must be] indispensable and proportionate to the realisation of those [consumer] benefits”. This is synonymous with the requirement that would be removed by Amendment 12.

## **Lords Amendments to Clause 30: Notice of findings**

### **Lords Amendment 14**

- 13 Lords Amendment 14 would require the CMA to publish a notice of findings of a conduct investigation provided to the undertaking under investigation. This would replace the requirement to provide a statement summarising the notice. Amendment 14 is part of a group of amendments that would require the CMA to publish the notice issued to the relevant designated undertaking, subject to necessary redactions for confidentiality reasons (see Amendment 37).

## **Lords Amendments to Clause 31: Enforcement orders**

### **Lords Amendment 15**

- 14 Lords Amendment 15 would require the CMA to publish an enforcement order that is provided to the undertaking under investigation in relation to breaches of conduct requirements. This would replace the obligation to publish a statement summarising the order. Amendment 15 is part of a group of amendments that would require the CMA to publish the notice issued to the relevant designated undertaking, subject to necessary redactions for confidentiality reasons (see Amendment 37).

## **Lords Amendments to Clause 32: Interim enforcement orders**

### **Lords Amendment 16**

- 15 Lords Amendment 16 would require the CMA to publish an interim enforcement order that is provided to the undertaking under investigation. This would replace the requirement to provide a statement summarising the notice. Amendment 16 is part of a group of amendments that would require the CMA to publish the notice issued to the relevant designated undertaking, subject to necessary redactions for confidentiality reasons (see Amendment 37).

## **Lords Amendments to Clause 34: Revocation of enforcement orders**

### **Lords Amendment 17**

- 16 Lords Amendment 17 would require the CMA to publish a notice that is provided to a designated undertaking revoking an enforcement order. This would replace the requirement to provide a statement summarising the notice. Amendment 17 is part of a group of amendments that would require the CMA to publish the notice issued to the relevant designated undertaking, subject to necessary redactions for confidentiality reasons (see Amendment 37).

## **Lords Amendments to Clause 38: Power to adopt final offer mechanism**

### **Lords Amendment 18**

- 17 Lords Amendment 18 would make clear that transactions involving either the provision or acquisition of goods or services to or from a third party can be subject to the final offer mechanism.

## **Lords Amendment to Clause 46: Power to make pro-competition interventions**

### **Lords Amendment 19\***

- 18 Lords Amendment 19 would remove the requirement that the pro-competition intervention (PCI) must be “proportionate” to the adverse effect on competition and replace it with a requirement that a PCI must remedy or help remedy an adverse effect on competition.

## **Lords Amendments to Clause 48: Procedure relating to PCI investigations**

### **Lords Amendment 20**

- 19 Lords Amendment 20 would require the CMA to publish a PCI investigation notice provided to the designated undertaking under investigation. This would replace the requirement to provide a statement summarising the notice. Amendment 20 is part of a group of amendments that would require the CMA to publish the notice issued to the relevant designated undertaking, subject to necessary redactions for confidentiality reasons (see Amendment 37).

## **Lords Amendments to Clause 51: Pro-competition orders**

### **Lords Amendment 21**

- 20 Lords Amendment 21 would require the CMA to publish a pro-competition order provided to the relevant designated undertaking. This would replace the requirement to provide a statement summarising the notice. Amendment 21 is part of a group of amendments that would require the CMA to publish the notice issued to the relevant designated undertaking, subject to necessary redactions for confidentiality reasons (see Amendment 37).

## **Lords Amendments to Clause 81: Privileged communications**

### **Lords Amendment 22**

- 21 Lords Amendment 22 would clarify that subsection (2) is subject to Part 2 of the Criminal Justice and Police Act 2001 as that Part is amended by clause 77 of the Bill. This would mean that legally privileged information is subject to the relevant provisions and safeguards in the Criminal Justice and Police Act 2001 when the CMA is exercising its power to seize information when entering premises under a warrant under clause 75 of the Bill.

## **Lords Amendments to Clause 88: Amount of penalties under section 87**

### **Lords Amendment 23 to 25**

- 22 Lords Amendment 23 would mean that only undertakings that are not individuals will be subject to penalties with maximums based on turnover.
- 23 Lords Amendment 24 removes a redundant subsection.
- 24 Lords Amendment 25 would ensure that the CMA can impose a penalty on a person that is not an undertaking. Subsection 5 sets out the maximum fixed amount and/or daily rate for these persons.

## **Lords Amendments to Clause 89: Procedure and appeals etc**

### **Lords Amendments 26\* to 28\***

- 25 Alongside Lords Amendments 31 and 32, Amendments 26 to 28 would change the appeals standard for digital markets penalties decisions from full merits to judicial review. Penalties for mergers would remain appealable on full merits.
- 26 These amendments would mean that all decisions taken by the CMA in connection with its digital markets functions, other than those taken in connection with its Chapter 5 merger functions, would be reviewed by the CAT on the same basis as the courts decide applications for judicial review.

## **Lords Amendments to Clause 101: Rights to enforce requirements of this Part**

### **Lords Amendment 29**

- 27 Lords Amendment 29 would create a power to permit rules of the relevant court and CAT to make provision for private actions brought under clause 101 to be transferred between the relevant court and the CAT and vice versa.

## **Lords Amendments to Clause 102: Treatment of CMA breach decisions etc**

### **Lords Amendments 30**

- 28 Lords Amendment 30 would clarify the circumstances under which a CMA breach decision becomes final and therefore binding on the courts for any private actions brought under clause 101. This is when the deadline to apply for a review of the decision has passed without any application being made or when an application, including any appeal relating to it, is determined.

## **Lords Amendments to Clause 103: Applications for review etc**

### **Lords Amendments 31\* and 32\***

- 29 Alongside Lords Amendments 26 to 28, Amendments 31 and 32 would change the appeals standard for digital markets penalties decisions from full merits to judicial review. Penalties for mergers would remain appealable on full merits.
- 30 These amendments would mean that all decisions taken by the CMA in connection with its digital markets functions, other than those taken in connection with its Chapter 5 merger functions, would be reviewed by the Competition Appeal Tribunal (CAT) on the same basis as the courts decide applications for judicial review.

## **Lords Amendments to Clause 107: Coordination with relevant regulators**

### **Lords Amendment 33**

- 31 Lords Amendment 33 would remove the definition of data protection legislation from clause 107, which applies only for the purposes of that clause. This is consequential to Lords Amendment 106, which provides a definition in a new clause inserted after clause 328 which would apply across the Bill.

## **Lords Amendments to Clause 109: Information sharing**

### **Lords Amendment 34**

- 32 Lords Amendment 34 would remove an amendment to the Communications Act 2003 which is now addressed by the new schedule that would be created by Lords Amendment 148.

## **Lords Amendments to Clause 110: Power to charge a levy**

### **Lords Amendment 35**

- 33 Lords Amendment 35 would clarify that the levy rules produced by the CMA must include provision about how the levy is to be paid, for example setting out when levy payments are due.

### **Lords Amendment 36**

- 34 Lords Amendment 36 would establish that the CMA is able to charge interest on the late payment of levy fees, and sets the rate of interest as that in section 17 of the Judgments Act 1838, which is currently 8%. It would clarify that stipulations made for the administration of the levy in subsection (5), specifically references to amounts payable, do not include any interest that may be charged. It would also specify that any interest collected must be returned to the Consolidated fund.

## **Lords Amendments to Clause 113: Publication of notices**

### **Lords Amendment 37**

- 35 Lords Amendment 37 would allow the CMA to redact information for confidentiality purposes when fulfilling its requirement to publish notices.

## **Lords Amendments to Clause 114: Guidance**

### **Lords Amendment 38\***

- 36 Lords Amendment 38 would establish that the Secretary of State has 40 days to respond to the CMA when it seeks approval for the guidance required by this clause. Within those 40 days, the Secretary of State must either approve the guidance or respond with a statement setting out why the guidance should not be published in that form.

## **Lords Amendments after Clause 115**

### **Lords Amendment 39**

- 37 Lords Amendment 39 would insert a new clause after clause 115 to prevent the CMA from being required to disclose information in its possession by a court or the CAT where another person would be reasonably able to provide that information. The new clause would also prevent any party from being required to disclose information where it relates to an ongoing CMA investigation by a court or the CAT.

## **Lords Amendment to Clause 117: General interpretation**

### **Lords Amendment 40**

- 38 Lords Amendment 40 would confirm that references to the supply, provision, acquisition or use of goods or services include the supply, provision, acquisition or use of digital content.



## **Lords Amendments to Part 2: Competition**

### **Lords Amendments to Clause 126: Use of damages-based agreements in opt-out collective proceedings**

#### **Lords Amendments 41**

- 39 Lords Amendment 41 would remove clause 126 from the Bill. Clause 126 addresses the impact of the Supreme Court judgment in *R (PACCAR Inc) v Competition Appeal Tribunal [2023] UKSC 28* in respect of opt-out collective proceedings before the CAT. The Government has introduced the Litigation Funding Agreements (Enforceability) Bill which seeks to address that judgment in respect of all types of proceedings.

### **Lords Amendments after Clause 129**

#### **Lords Amendment 42**

- 40 Lords Amendment 42 would insert a new clause which introduces the new schedule inserted by Lords Amendment 117 in Part 2 of the Bill. The amendment would confirm that the provisions in the new schedule relating to foreign powers gaining control or influence over newspaper enterprises does not apply in relation to foreign state merger situations created before 13 March 2024.

### **Lords Amendments to Clause 130: Mutual agreements to extend time-limits: duty to make reference cases**

#### **Lords Amendment 43**

- 41 Lords Amendment 43 would clarify that a period extended under any subsection of section 39 of the Enterprise Act 2002 can also be extended under any other subsection of that section (not just specified subsections). This would ensure that an extension for one purpose does not rule out an extension for any other purpose, where applicable.

### **Lords Amendments to Clause 131: Mutual agreements to extend time-limits: public interest cases**

#### **Lords Amendment 44**

- 42 Lords Amendment 44 would amend clause 131 in the same way that Amendment 43 would amend clause 130. This would maintain consistency between equivalent provisions dealing with extensions in the context of public interest cases and ordinary cases.

## **Lords Amendments to Part 3: Enforcement of Consumer Protection Law**

### **Lords Amendments to Clause 157: Enforcement orders: requirement to pay monetary penalty**

#### **Lords Amendments 45 and 46**

- 43 These amendments are the first in a series of technical amendments which would ensure that Part 3 of the Bill accounts for the different mechanisms in Scotland and Northern Ireland for the service and enforcement of orders, with respect to court orders imposing a monetary penalty.
- 44 Lords Amendment 45 would add that the prescribed information that must be included in court orders imposing monetary penalties for consumer law breaches may also be included in a separate document accompanying the order rather than in the order itself.
- 45 Lords Amendment 46 would set out that, in Scotland, 'service of the order' would include service of an extract order in execution of or diligence on the order.

### **Lords Amendments to Clause 159: Applications**

#### **Lords Amendments 47 to 50**

- 46 These amendments are the first of a series of amendments that would extend the power to apply to the court for an online interface order and an interim online interface order to all public designated enforcers.
- 47 Lords Amendment 47 would empower all public designated enforcers listed in clause 150(1) to apply to the court for an online interface order or an interim online interface order, instead of only the CMA. Lords Amendments 48 and 49 are consequential to Amendment 47 to achieve the same outcome.
- 48 Lords Amendment 50 would extend the CMA's existing enforcement coordination power set out in clause 153 so it can make directions to other enforcers when it appears that another public designated enforcer intends to apply for an online interface order or interim online interface order.

### **Lords Amendments to Clause 160: Online interface orders**

#### **Lords Amendments 51 to 53**

- 49 These amendments are consequential to Amendment 47.
- 50 Lords Amendment 51 would provide for an application for an online interface order being made by any public designated enforcer, not just the CMA. It would allow the online interface order to include directions for the necessary steps to be taken to facilitate the registration of a domain name by the public designated enforcer who applied for the order (rather than by the CMA).
- 51 Lords Amendment 52 would allow the public designated enforcer that applied for the order, the power to publish the order and, if known, the identity of the person that has engaged, is engaging or is likely to engage in the relevant infringement.

- 52 Lords Amendment 53 would give a discretion to the public designated enforcer that applied for the order to determine the form and manner of publication, to eliminate any continuing effects of the relevant infringement.

## **Lords Amendments to Clause 161: Interim online interface orders**

### **Lords Amendments 54 to 56**

- 53 These amendments are consequential to Amendment 47.
- 54 Lords Amendment 54 would provide for an application for an interim online interface order being made by any public designated enforcer, not just the CMA. It would allow an interim online interface order to include directions for the necessary steps to be taken to facilitate the registration of a domain name by the public designated enforcer who applied for the order (rather than the CMA).
- 55 Lords Amendment 55 would require the public designated enforcer who applied for the interim online interface order to include all material information known to it in its application to the court.
- 56 Lords Amendment 56 would allow the court to vary or discharge the interim online interface order it granted, if a request is made by the enforcer that made the application (rather than the CMA).

## **Lords Amendments to Clause 165: Consumer protection orders or undertakings to court: further proceedings**

### **Lords Amendments 57 and 58**

- 57 Lords Amendments 57 and 58 are consequential to Amendment 47. These amendments would ensure that the matters listed at clause 165(6) appropriately apply where the application for breach of a court undertaking includes an application for a consumer protection order (as defined), instead of the listed matters only applying to an application for an (interim) enforcement order.

## **Lords Amendments to Clause 166: Undertakings to public designated enforcers: further proceedings**

### **Lords Amendments 59 and 60**

- 58 Lords Amendments 59 and 60 amendments are consequential to Amendment 47. These amendments would ensure that the matters listed at clause 166(6) appropriately apply when an application is made for a consumer protection order. For example, where a designated public enforcer makes an application in respect of a failure to comply with an undertaking given to it or another enforcer, the CMA would not be able to direct that only it can make an application for an online interface order or interim online interface order only (see Amendment 50 above).

## **Lords Amendments to Clause 167: Monetary penalties under sections 165 and 166: amount**

### **Lords Amendment 61**

- 59 Lords Amendment 61 would clarify that references in this clause to maximum amounts of daily penalties are maximums per day, not in total. In addition to (or instead of) imposing a fixed amount penalty, the court would have a power to impose daily penalties of up to £15,000 or 5% of daily turnover (whichever is higher) for each day that an undertaking given to the court or to a public designated enforcer has not been complied with.

## **Lords Amendments to Clause 168: Notification requirements: applications**

### **Lords Amendments 62 to 66**

- 60 Lords Amendments 62 to 66 are consequential to Amendment 47. These amendments would require a public designated enforcer, other than the CMA, to notify the CMA before applying for an online interface order and interim online interface order. These amendments extend the existing notification requirements, which already apply before enforcers make applications for an enforcement order and interim enforcement order.

## **Lords Amendments to Clause 189: Monetary penalties under section 188: amount**

### **Lords Amendment 67**

- 61 Lords Amendment 67 would clarify that references in this clause to maximum amounts of daily penalties are maximums per day, not in total. In addition to (or instead of) imposing a fixed amount penalty, the CMA would have a power to impose daily penalties of up to £15,000 or 5% of daily turnover (whichever is higher) for each day that an undertaking given to it has not been complied with.

## **Lords Amendments to Clause 192: Monetary penalties under section 191: amount**

### **Lords Amendment 68**

- 62 Lords Amendment 68 would clarify that references in this clause to maximum amounts of daily penalties are maximums per day, not in total. In addition to (or instead of) imposing a fixed amount penalty, the CMA would have a power to impose daily penalties up to £15,000 or 5% of daily turnover (whichever is higher) for each day that an enforcement direction it has given has not been complied with.

## **Lords Amendments to Clause 202: Information to accompany orders or notices imposing monetary penalties**

### **Lords Amendments 69 and 70**

- 63 Lords Amendment 69 would allow the order or notice accompanying an order imposing monetary penalties to state the appropriate appeal rights available to the respondent according to the relevant jurisdiction at the time of service.
- 64 Lords Amendment 70 would clarify the interpretation of the words 'order' as set out in clause 157 for the purpose of clause 202, and 'service of order' in relation to Scotland.



## **Lords Amendments to Part 4: Consumer Rights and Disputes**

### **Lords Amendments to Clause 228: Omission of material information from invitation to purchase**

#### **Lords Amendments 71 to 73**

- 65 Lords Amendments 71 to 73 would prohibit the “drip pricing” of mandatory fees by amending clause 228 such that a commercial practice which is an invitation to purchase is deemed to omit material information if it does not provide the total price of a product.
- 66 Lords Amendment 71 would specify that the total price of the product must be presented to consumers when there is an invitation to purchase. It would require that where there are mandatory fees associated with a product that are not fixed and therefore cannot be pre-calculated, for example delivery fees, information about how these variable fees will be calculated must be provided to consumers.
- 67 Lords Amendment 72 is consequential to Lords Amendment 71. It would specify that any freight, delivery, or postal charges (including taxes) not included in the total price which consumers may choose to incur must be provided as part of an invitation to purchase.
- 68 For the purpose of Lords Amendment 71, Lords Amendment 73 would specify that the total price of the product includes any fees, taxes, charges, or other payments that a consumer must pay to purchase the product. It would require that where there are mandatory fees associated with a product that are not fixed and therefore cannot be pre-calculated, the information provided about how these variable fees are to be calculated must enable the consumer to calculate the total price of the product. This information must be set out with as much prominence as the headline price of the product, for example where a headline price is displayed on the webpage, information about the variable fees should not be presented in smaller text at the bottom of the page. These requirements are subject to the matters set out in subsection (6), which are any limitations resulting from the means of communication and any steps taken by the trader to overcome those limitations by providing information by other means. The means of communication may include for example, apps, webpages, and in-store banners.

### **Lords Amendments to Clause 231: Rights of redress: further provision**

#### **Lords Amendments 74 and 75**

- 69 Lords Amendments 74 and 75 would change the parliamentary procedure such that any regulations made under this clause are subject to the affirmative procedure. This would implement the recommendation of the Delegated Powers and Regulatory Reform Committee.

## **Lords Amendments to Clause 235: Offences**

### **Lords Amendment 76**

- 70 Lords Amendment 76 would provide that the new banned practices relating to fake reviews provided for by Lords Amendment 140 would be an excluded description of commercial practice for the purposes of clause 235(7), and accordingly would not be subject to criminal liability.

## **Lords Amendments to Clause 249: Consequential amendments etc relating to this Chapter**

### **Lords Amendment 77**

- 71 Lords Amendment 77 would amend clause 249 to move the consequential amendments that were previously located in this clause into the new schedule created by Amendment 141.

## **Lords Amendments to Clause 253: Excluded contracts**

### **Lords Amendment 78**

- 72 Lords Amendment 78 would set out that clause 273(4) to (8) modifies how the subscription contracts chapter would apply to a contract that was once an excluded contract but subsequently ceases to be.

## **Lords Amendments to Clause 257: Content and timing of reminder notices**

### **Lords Amendment 79**

- 73 Lords Amendment 79 would remove the requirement in clause 257(2)(b) which requires that a reminder notice is given separately from any other information. This would be replaced with a provision which requires a trader to give the consumer a reminder notice in such a way that the statutory information (as set down in clause 257(1)) is more prominent than any other information given to the consumer at the same time.

## **Lords Amendments to Clause 258: Arrangement for consumers to exercise right to end contract**

### **Lords Amendments 80 and 81**

- 74 Lords Amendment 80 would replace the requirement for a trader to make arrangements for consumers to end their subscription contract in 'a single communication' with the requirement to provide arrangements which are straightforward.
- 75 Lords Amendment 81 would, where a consumer had a contractual right to bring their subscription contract to an end, allow for a consumer to notify a trader that they wish to bring their subscription contract to an end through a 'clear statement' rather than 'by any means'.

## **Lords Amendments to Clause 261: Right to cancel for breach of implied term**

### **Lords Amendment 82**

- 76 Lords Amendment 82 would, where a consumer had a statutory right to cancel their subscription contract because a trader has breached an implied term of the contract, allow for a consumer to notify a trader that they wish to cancel through a 'clear statement' rather than 'by any means'.

## **Lords Amendments to Clause 262: Right to cancel during cooling-off period**

### **Lords Amendment 83**

- 77 Lords Amendment 83 would, where a consumer had a statutory right to cancel their subscription contract during a cooling off period, allow for a consumer to notify a trader that they wish to cancel through a 'clear statement' rather than 'by any means'.

## **Lords Amendments to Clause 265: Cancellation of subscription contract: further provision**

### **Lords Amendments 84 and 85**

- 78 Lords Amendment 84 would clarify that the power in clause 265(1)(a) can be used to make regulation to provide that a consumer may lose their right to cancel their subscription contract during a cooling off period, particularly if they choose to receive digital content or services.
- 79 Lords Amendment 85 would clarify that the power in clause 265(1)(b) can be used to make regulations which remove or reduce the refund that a consumer is entitled to if they cancel their subscription contract during a cooling off period, particularly if they have received digital content or services.

## **Lords Amendments to Clause 273: Application of this Chapter**

### **Lords Amendment 86**

- 80 Lords Amendment 86 would clarify that a contract entered in to before Chapter 2, Part 4 comes into force is not considered a subscription contract for the purposes of this chapter.

### **Lords Amendment 87**

- 81 Lords Amendment 87 would modify how some of Chapter 2, Part 4 would apply to a contract that was once an excluded contract to the Chapter, but subsequently ceases to be. The amendment would disapply the requirement for affected traders to send key- and pre- key-



contract information, and failure to provide this information would no longer be a breach of implied terms.

- 82 The amendment would disapply the requirement for affected traders to provide a reminder notice during a concessionary period, as well as the requirements associated with the initial cooling off period.
- 83 The amendment would modify out how an affected trader would follow the reminder notice obligations, by requiring these obligations to apply only from the 'relevant day'. The 'relevant day' would be the day the contract ceases to be an excluded contract.
- 84 The amendment would require affected traders to send contract information, in line with schedule 22, within a reasonable period of the 'relevant day', and in any case within 12 months. Failure to provide this information would be considered a breach of an implied term.

## **Lords Amendments to Clause 283: Insolvency protection requirement**

### **Lords Amendment 88**

- 85 Lords Amendment 88 would amend clause 283(4) to broaden the meaning of insolvency for the purposes of Chapter 3, to include a wider range of personal and corporate insolvency events.

## **Lords Amendments to Clause 285: Trust arrangements**

### **Lords Amendments 89**

- 86 Lords Amendment 89 would amend clause 285(6) to require that both limbs of the test of whether a trustee is independent of the trader in relation to a trust need to be satisfied.

## **Lords Amendments to Clause 295: Determination of applications for accreditation or variation of accreditation**

### **Lords Amendments 90 and 91**

- 87 Lords Amendment 90 would clarify that, when accredited ADR providers apply to have their accreditation varied, the Secretary of State may, under clause 295(8)(b)(ii), do so to a different (whether a greater or lesser) extent than that applied for.
- 88 Lords Amendment 91 would enable the Secretary of State under clause 295(9), to adjust conditions attached to an ADR provider's accreditation whenever a variation is granted (whether that variation is to the same or a different extent than that applied for).

## **Lords Amendments to Clause 296: Revocation or suspension of accreditations etc**

### **Lords Amendment 92**

- 89 Lords Amendment 92 would clarify that, when sanctioning accredited ADR providers for non-compliance, the Secretary of State may, under clause 296(4)(a)(ii), vary or remove existing conditions on the accreditation, as well as impose new ones.

### **Lords Amendments 93 to 100**

- 90 Lords Amendments 93 to 100 are a series of technical amendments to clause 296 relating to the Secretary of State’s power to vary an ADR provider’s accreditation where the ADR provider does not comply with the requirements of its accreditation.
- 91 Lords Amendment 93 would clarify that the Secretary of State may restrict the accreditation of an ADR provider to ADR that has already been referred or special ADR arrangements which already exist, which allows ongoing ADR to finish smoothly.
- 92 Lords Amendments 94 to 98 would require that any variation – not just variations imposing new conditions on the ADR provider – must be a variation which the Secretary of State considers necessary to secure compliance, including with pre-variation accreditation conditions, must be kept under review and removed when they are no longer necessary for that purpose.
- 93 Lords Amendments 99 and 100 would amend subsection (8) to refer to “variations” rather than “alterations”, to align with terminology used in the clause.

## **Lords Amendments to Clause 302: ADR information directions**

### **Lords Amendment 101**

- 94 Lords Amendment 101 would amend clause 302 to remove subsection (7). This amendment is in consequence of Lords Amendment 106, which inserts a new clause to make express provision about the relationship between the information gathering powers in the Bill and the data protection legislation framework.

## **Lords Amendments to Clause 303: Disclosure of ADR information by the Secretary of State**

### **Lords Amendment 102**

- 95 Lords Amendment 102 would amend clause 303 to remove subsection (4). This amendment is in consequence of Lords Amendment 106, which inserts a new clause to make express provision about the relationship between the information gathering powers in the Bill and the data protection legislation framework.

## Lords Amendments to Clause 304: Meaning of “ADR information” and other terms in sections 301 to 303

### Lords Amendment 103

- 96 Lords Amendment 103 would remove the definition of data protection legislation which applies for the purposes of that clause. This is in consequence of Lords Amendment 105, which inserts a definition into clause 328 which makes interpretative provision which applies across the whole Bill.

## Lords Amendments after Clause 308

### Lords Amendment 104\*

- 97 Lords Amendment 104 would add a new clause after clause 308. The new clause would insert new section 92A (requirements on secondary ticketing facilities) in Part 3, Chapter 5 of the Consumer Rights Act 2015 which regulates the resale of tickets for recreational, sporting or cultural events (secondary ticketing). The new section would impose obligations on a secondary ticketing facility, which is defined by section 95 of that Act as an internet-based facility for the resale of tickets to those events.
- 98 Subsection (1) of the new section would prohibit the secondary ticketing facility from accepting ticket postings from a business or trader without having first received evidence of purchase or title of those tickets. That prohibition would not apply in relation to consumers using the site to resell a ticket.
- 99 Subsection (2) would prohibit the secondary ticketing facility from accepting for sale by a reseller on its site more tickets than the reseller is allowed to purchase on the primary market.
- 100 Subsections (3) and (4) would require the secondary ticketing facility to ensure that information on the face value of the ticket and the business name and address of the traders selling the ticket are fully visible on the first page on which the ticket is viewable. That information must not be masked or abbreviated such as to inhibit its clarity to a consumer using the facility. This provision would be in addition to the existing obligation in section 90(3)(c) to display the face value of the ticket.
- 101 Subsection (5) would require the secondary ticketing facility to make clear to businesses and traders based outside of the UK that by targeting UK consumers with their adverts or published material they become subject to UK legislation.

## **Lords Amendments to Part 6: General**

### **Lords Amendments to Clause 328**

#### **Lords Amendment 105**

102 Lords Amendment 105 would insert a definition of data protection legislation into clause 328, which makes interpretative provision which applies across the Bill.

### **Lords Amendments after Clause 328**

#### **Lords Amendment 106**

103 Lords Amendment 106 would insert a new clause which makes express provision about the relationship between the information gathering powers set out in the Bill and the data protection legislation framework. The new clause would clarify that no provision in the Bill would require or authorise the processing of data that would contravene data protection legislation.

### **Lords Amendments after Clause 329**

#### **Lords Amendment 107**

104 Lords Amendment 107 would insert a new clause which provides that consultation requirements which arise under or by virtue of a provision in the Bill may be satisfied by consultation which takes place before the Bill receives Royal Assent.

### **Lords Amendments after Clause 330**

#### **Lords Amendment 108**

105 Lords Amendment 108 would insert a new clause introducing a new schedule which makes minor and consequential provision amending other legislation as a consequence of provisions made in Part 2, Part 3, Chapter 1 of Part 4 and Chapter 2 of Part 5, of the Bill.

### **Lords Amendments to Clause 331: Power to make further consequential provision**

#### **Lords Amendments 109 and 110**

106 Lords Amendment 109 would amend clause 331(1) to replace ‘Secretary of State’ with ‘appropriate authority’ so that an ‘appropriate authority’ could make regulations which are consequential on this Act or any provision made under it.

107 Lords Amendment 110 would amend clause 331 to insert a definition that ‘appropriate authority’ in clause 331(1) means the Secretary of State unless the regulations made contain amendments only in relation to tax, in which case it means the Treasury.

## **Lords Amendments to Clause 332: Regulations**

### **Lords Amendment 111**

108 Lords Amendment 111 would insert into clause 332 a subsection to provide that where the Treasury makes regulations using the power in clause 332 to make amendments to tax legislation only, the regulations would be subject only to procedure in the House of Commons in recognition of the financial privilege of the Commons.

## **Lords Amendments to Clause 334: Commencement**

### **Lords Amendment 112**

109 Lords Amendment 112 would provide for the new clause created by Lords Amendment 42 and the new Schedule created by Lords Amendment 117 to come into force on the day on which this Bill is passed.

### **Lords Amendment 113**

110 Lords Amendment 113 would amend clause 334 in order to leave out subsection (2)(a). This amendment is consequential on Lords Amendment 41 which would omit clause 126. Clause 334(2)(a) brings clause 126 into force on the day on which the Act is passed. This would no longer be required on the omission of clause 126.

### **Lords Amendment 114**

111 Lords Amendment 114 would amend clause 334 so that the new clause and Schedule making minor and consequential amendments, as would be introduced by Lords Amendments 108 and 148, can be commenced by regulations made by the Secretary of State, and so brought into force at the same time as the substantive provisions on which they are consequential.

## Lords Amendments to Schedule 4: Relevant and special merger situations

### Lords Amendment 115

112 Lords Amendment 115 would amend Schedule 4 of the Bill to add a new amendment to section 59 of the Enterprise Act 2002, consequential on the existing amendments made by Schedule 4 to the requirements in section 59(3) for the creation of a special merger situation. The new amendment to section 59(5) would ensure that the sections in Chapter 1 of Part 3 of the Enterprise Act 2002 which are applied with modifications by section 59(5) and (6) for the purposes of deciding whether the conditions for the creation of a special merger situation are met, are applied correctly for those purposes in the light of the amendments made by Schedule 4 to section 59(3).

## Lords Amendments to Schedule 5: Mergers: fast-track references under sections 22 and 33 of EA 2002

### Lords Amendment 116

113 Lords Amendment 116 would amend sections 39 and 40 of the Enterprise Act 2002 inserting a new subsection in Schedule 5 of the Bill so that extensions for “special reasons” under the new fast track procedure are treated in the same way as extensions for “special reasons” in ordinary cases, including, for example, by clarifying that only one extension for “special reasons” is permitted. This would provide that extensions to the statutory deadlines for Phase 2 merger investigations under the new fast track procedure operate correctly within the existing legal framework for deadline extensions under section 39 and section 40 of the Enterprise Act 2002.

## Lords Amendments after Schedule 6

### Lords Amendment 117

114 Lords Amendment 117 would insert a new schedule after Schedule 6, which in turn would insert a new Chapter (Chapter 3A: “Mergers involving newspaper enterprises and foreign powers”) and Schedules (Schedule 6A: “Determination of when a foreign state newspaper merger situation has been created” and Schedule 6B: “Control or influence of a person by a foreign power”) into the Enterprise Act 2002, relating to mergers involving newspaper enterprises and foreign powers. The new Chapter 3A would include the new sections 70A to 70G referred to below, and new Schedule 6B would include new Parts 1, 2 and 3.

#### **New section 70A**

115 Subsection (1) of this new section would require the Secretary of State to give the CMA a notice (a “foreign state intervention notice”) if the Secretary of State has reasonable grounds to suspect that a foreign state newspaper merger situation (as defined in subsection (3)) has been created or its creation is in progress or under contemplation. Subsection (2) confirms that the situation in question must be specified in the notice, while subsection (6) confirms that the notice comes into force when it is given, and ceases to be in force when the matter to which it

relates is finally determined.

116 Subsection (3) sets out the circumstances in which a foreign state newspaper merger situation would be considered to have been created. Subsection (3) applies existing provisions in the Enterprise Act relating to merger situations, with modifications as set out in new Schedule 6A, to circumstances where one of the enterprises which is being merged is a newspaper enterprise, and as a result of the merger, a foreign power is able to control or influence, or increase its level of control or influence over, the policy of the person carrying on the newspaper enterprise.

117 Subsection (4) introduces new Schedule 6B which makes provision about the circumstances in which a foreign power is able to control or influence the policy of a person for the purposes of this Chapter.

#### **New section 70B**

118 Subsection (1) would oblige the CMA to provide a report to the Secretary of State, within a time period specified by the Secretary of State, in relation to the foreign state intervention notice which has been given to them.

119 Subsection (2) sets out the necessary content of such a report, namely the decision which the CMA has reached as to whether a foreign state newspaper merger situation has been created (or is in progress or under contemplation), and a summary of the relevant representations which it has received. The CMA must carry out the investigations it considers appropriate to inform its report (subsection (3)), and - as part of its investigations - the CMA must invite representations from the enterprises concerned (subsection (4)).

#### **New section 70C**

120 This new section would set out the action which the Secretary of State must take on receipt of a report from the CMA setting out the CMA's belief that a foreign state newspaper merger situation has been created, is in progress or is under contemplation.

121 Subsection (2) confirms that, in such circumstances, the Secretary of State must make an order containing such provision which they consider reasonable and practicable, which may include anything permitted by Schedule 8 to the Enterprise Act (provision that can be included in enforcement orders), as well as such supplementary, consequential or incidental provision as they consider appropriate (subsection (3)), to prevent or reverse the merger. Subsection (4) confirms that such an order can be varied or revoked.

122 Subsection (5) enables the existing provisions in paragraph 2 of Schedule 7 to the Enterprise Act 2002 relating to enforcement and the prevention of pre-emptive action to be applied to this new Chapter. This would give the Secretary of State the power to make an order which prevents action which might prejudice a foreign state intervention notice which is in force, or the CMA's report on the case, or the ability for either the Secretary of State, or the CMA, to take any action relating to a notice or a report.

#### **New section 70D**

123 This new section would confirm that other powers in Part 3 of the Enterprise Act 2002 (for example, the public interest merger regime in Chapter 3) could also be exercised in relation to a foreign state newspaper merger situation (subsection (1)), and that the use of those other

powers would not prevent the exercise of the powers in new Chapter 3A (subsection (2)).

124 Subsection (3) would require the CMA to bring to the attention of the Secretary of State any case which it has identified through the exercise of its duties under section 22 (“Duty to make references in relation to completed mergers”) or 33 (“Duty to make references in relation to anticipated mergers”), and which it believes may involve a foreign state newspaper merger situation. This reflects a similar requirement in section 57 of the Enterprise Act 2002 for the CMA (and Ofcom) to bring to the attention of the Secretary of State any case which it believes raises any public interest consideration, as specified in section 58 of the Enterprise Act 2002.

#### **New section 70E**

125 This new section would set out a definition of “foreign power” for the purposes of this Chapter. The definition is modelled on section 32 of the National Security Act 2023 but also includes senior members of a foreign government, state, agency or authority in their private capacity as well as their public one. Subsection (3) clarifies that the Channel Islands, the Isle of Man and the British Overseas Territories are not to be considered as foreign countries or territories for the purpose of this Chapter.

126 This provision should be read with section 127 of the Enterprise Act (associated persons). Section 127 provides that associated persons, and any bodies corporate they control, are to be treated as one person for the purposes of establishing whether there is a foreign state newspaper merger situation under new section 70A(3) - see paragraph 4(10) of Schedule 6A to the Bill. For example, an individual who is a foreign power, and any spouse, partner or relative of that individual are associated persons.

#### **New section 70F**

127 Subsection (1) of this section would clarify that the term “newspaper” is to be read, for the purpose of this Chapter, as including periodicals (such as news magazines).

128 Subsection (2) would confirm that a matter is considered to be “finally determined” when the Secretary of State has either made an order to prevent or reverse a merger under new section 70C(2) or has published a report provided by the CMA under new section 70B stating that the CMA does not believe that such a merger has been created, is in progress or is under contemplation.

#### **New section 70G**

129 This new section would enable the Secretary of State to amend the definition of “foreign power” or “newspaper” (subsection (1)) by making regulations subject to the affirmative resolution procedure. Such regulations may provide for a description of person to be treated as if they were not a foreign power (subsection (2)), for the purpose of this Chapter.

130 Subsection (1) of this section would enable the Secretary of State to change the meaning of ‘foreign power’.

131 Subsection (2) of this section would set out that regulations may, in particular, make provision to exclude categories of persons from being treated as a foreign power and to base this on the level of independence that person has from a foreign power or the level of interest they have in a newspaper or news magazine.

132 Subsection (1)(b) would give the Secretary of State the ability to change the definition of



‘newspaper’, where reference is made to it throughout this Chapter either to widen or to narrow the scope of the types of news publication covered by the foreign state newspaper merger regime.

133 Subsection (3) would give the Secretary of State the power to apply provisions in Chapter 1 of Part 3 to the Enterprise Act 2002 to the new regime in Chapter 3A. In particular, a modification to a provision in Part 3, Chapter 1 by Schedule 6A sets the turnover threshold for the creation of a foreign state newspaper merger situation at £2 million. The power in section 70G(3)(3) would enable this threshold to be varied.

#### **New Schedule 6A**

134 Schedule 6A would apply a number of provisions, with modifications, from Chapter 1 of Part 3 of the Enterprise Act 2002 (sections 23 to 29) for the purposes of new Chapter 3A.

135 Subparagraph 1(2) amends section 23 to reduce the turnover threshold for the creation of a relevant merger situation to £2 million.

136 Subparagraph 1(3) amends section 24 to provide that the deadline for the Secretary of State to issue a foreign state intervention notice and for the CMA to give its report (see new section 70B below) is, in relation to a completed merger, four months from the date of completion or notice of the material facts of the merger are given to the CMA or Secretary of State, or are made public. The material facts include facts about whether or the extent to which a foreign power is able to control or influence a newspaper enterprise.

137 Subparagraph 1(5) modifies section 26 to provide that where a foreign power which is already able to control or influence a newspaper enterprise increases their level of control or influence (e.g. by acquiring more shares or voting rights), this is to be treated as the foreign power bringing the newspaper under its control thus allowing the Secretary of State to give a foreign state intervention notice.

#### **New Schedule 6B, Part 1 - Conditions for control or influence**

138 This new Part would set out a list of conditions which define when control or influence from a foreign power arises in the case of a merger involving newspaper enterprise and a foreign power. If one or more of these conditions is met, a foreign power would be considered to be able to control or influence the policy of a person defined in new section 70F as a newspaper or periodic news publication. The specific conditions in subparagraphs (2) to (6) would be subject to a power to amend the requirements set out in Part 3 of this schedule.

- a. Subparagraph (2) sets conditions related to the holding of shares by a foreign power where directly or indirectly in a UK newspaper or periodic news publication.
- b. Subparagraph (3) sets conditions related to voting rights that a foreign power holds either directly or indirectly in a UK newspaper or periodic news publication.
- c. Subparagraph (4) sets conditions related to any right, directly or indirectly, to appoint or remove any officer (for example a director or chief executive) of a UK newspaper or periodic news publication.
- d. Subparagraph (5) sets conditions related to any right or ability to direct, control or influence (whether directly or indirectly) the policies or activities of a UK newspaper or a periodic news publication; this would include a UK newspaper or a periodic news publication’s editorial policies.

- e. Subparagraph (6) applies the requirements on control and influence where the foreign power exercises that through a trust or partnership.

#### **New Schedule 6B, Part 2 - Interpretation**

139 This new Part would set out how various terms should be interpreted for the purpose of new Schedule 6A. It includes subparagraph 7 which defines voting rights in relation to shares that have such a right, subparagraph (9), which sets out how the provisions should be interpreted where a foreign power holds a share or right in an indirectly for example 9(1)(b) as part of a chain, while subparagraph (11) confirms that where a foreign power controls a right, the right is to be treated as held by that foreign power.

#### **New Schedule 6B, Part 3 - Power to amend circumstances in which there is control or influence**

140 This new Part would provide the Secretary of State with the power to make regulations to amend the requirements which must be satisfied in order for a foreign power to be considered to have control or influence. This includes the capacity to change specified proportions of shares or rights (paragraph 15(1)(a) and (b)), the assumptions to be made regarding control or influence including with reference to ownership of those shares or rights (paragraph 15(1)(c)), and the point at which 'control' or 'influence' will be considered to come within new section 70A (paragraph 15(1)(d)); as well as to change or supplement new Schedule 6B, Part 1 such as to include other circumstances which would come to a similar effect as the conditions set out in that Part. The power can be used to apply such changes from 13 March 2024.

141 Subparagraph 15(3) confirms that such regulations may confer a discretion on the CMA.

#### **Further amendments**

142 New Schedule 6A would make various consequential amendments to the Enterprise Act 2002. These would include provisions in paragraph (4) (*Further amendments*) which would require the Secretary of State to publish details of any foreign state intervention notice (subparagraph 4(a)) and any report received by the Secretary of State from the CMA under section 70B within 7 days of its receipt (subparagraph 4(b)). Subparagraph (9) would provide that a statutory instrument under section 70G or paragraph (15) of this Schedule must be made using the affirmative resolution procedure.

## **Lords Amendments to Schedule 9: Civil penalties etc in connection with competition investigations**

### **Lords Amendments 118 and 119**

143 Alongside Lords Amendment 121, Lords Amendments 118 and 119 would make amendments to the provisions made by Schedule 9 to the Bill which concern the amendment of existing powers, and introduction of new powers, to impose civil penalties in order to enforce investigative measures under competition law. These amendments would clarify that references to maximum amounts of daily penalties are maximums per day, and not in total.

### **Lords Amendment 120**

144 Lords Amendment 120 would update a cross reference in section 120 of the Enterprise Act 2002 to reflect updated clause numbers as amended by the Bill, so that decisions made under

the civil penalty provisions in Part 3 of that Act, as amended by the Bill, are carved out from that provision. Section 120 allows persons to seek a review of certain decisions made under Part 3 of the Enterprise Act 2002 in the CAT on judicial review principles. As decisions made under the civil penalty provisions in Part 3 (including those introduced by the Bill) are appealable on the merits under section 114 of the Enterprise Act 2002, they have been carved out from section 120 of that Act.

### Lords Amendment 121

145 Alongside Lords Amendment 118 and 119, Lords Amendment 121 would make amendments to the provisions made by Schedule 9 to the Bill which concern the amendment of existing powers, and introduction of new powers, to impose civil penalties in order to enforce investigative measures under competition law. This amendment would clarify that references to maximum amounts of daily penalties are maximums per day, and not in total.

## Lords Amendments to Schedule 10: Civil penalties etc in connection with breaches of remedies

### Lords Amendments 122 to 124

146 Lords Amendments 122 to 124 would make amendments to the provisions made by Schedule 10 to the Bill which concern the amendment of existing powers, and introduction of new powers, to impose civil penalties in order to enforce remedies which have been accepted or imposed to address competition concerns. These amendments would clarify that references to maximum amounts of daily penalties are maximums per day, and not in total.

147 Lords Amendment 122 would amend paragraph 6 in Schedule 10 to clarify the provision made by new section 35B of the Competition Act 1998 which is inserted by that paragraph.

148 Lords Amendments 123 and 124 would both amend paragraph 11 in Schedule 10 to clarify the provision made by new section 94AB of the Enterprise Act 2002, inserted by that paragraph.

### Lords Amendment 125

149 Lords Amendment 125 would amend Schedule 10 for the purposes of updating cross references in section 120 of the Enterprise Act 2002 to reflect updated clause numbers as amended by the Bill, and so that decisions made under the civil penalty provisions in Part 3 of that Act, as amended by the Bill, are carved out from that provision.

### Lords Amendment 126

150 Lords Amendment 126, similar to Lords Amendments 122 to 124 above, would amend paragraph 17 in Schedule 10 to clarify that reference to maximum amounts of daily penalties are maximums per day, and not in total, for the purposes of the provision made by new section 167B of the Enterprise Act 2002, inserted by that paragraph.

### Lords Amendment 127

151 Lords Amendment 127 would amend Schedule 10 for the purposes of updating cross references in section 179 of the Enterprise Act 2002. It would provide that decisions made under the civil penalty provisions in Part 4 of that Act, as amended by the Bill, are carved out from the scope of judicial review under section 179, as such decisions will be appealable on the merits.

## **Lords Amendments to Schedule 12: Service and extra-territoriality of notices under CA 1998 and EA 2002**

### **Lords Amendment 128**

152 Lords Amendment 128 would make a consequential amendment to Schedule 12 which would provide that the CMA's power to give a notice under section 109(2) or (3) of the Enterprise Act 2002 to a person outside the United Kingdom can be made in respect of a case involving a foreign state intervention notice.

## **Lords Amendments to Schedule 13: Orders and regulations under CA 1998 and EA 2002**

### **Lords Amendment 129**

153 Together with Lords Amendment 131, Lords Amendment 129 would adjust amendments made to section 124 of the Enterprise Act 2002 by Schedule 13 to the Bill, to take account of a recent amendment to that section by the Energy Act 2023. This would provide for a consistent approach to the provisions in that section which determine the Parliamentary procedure for orders and regulations respectively under Part 3 of the Enterprise Act 2002. Subsection (5) of section 124 of the Enterprise Act 2002 would relate to orders, and subsection (5A) of section 124 would relate to regulations, including regulations for energy network merger purposes under section 68A (which was inserted by the Energy Act 2023).

## Lords Amendment 130

154 Lords Amendment 130 would amend paragraph 2 in Schedule 13 to the Bill in order to amend section 124 of the Enterprise Act 2002. This would remove a legislative cross reference which is redundant in consequence of the provision made by paragraph 17(6) and (9) of Schedule 9 to the Bill.

## Lords Amendment 131

155 Together with Lords Amendment 129, Lords Amendment 131 would adjust amendments made to section 124 of the Enterprise Act 2002 by Schedule 13 to the Bill, to take account of a recent amendment to that section by the Energy Act 2023. This would provide for a consistent approach to the provisions in that section which determine the Parliamentary procedure for orders and regulations respectively under Part 3 of the Enterprise Act 2002. Subsection (5) of section 124 of the Enterprise Act 2002 would relate to orders, and subsection (5A) of section 124 would relate to regulations, including regulations for energy network merger purposes under section 68A (which was inserted by the Energy Act 2023).

## Lords Amendments 132 to 134

156 Lords Amendment 132 to 134 would make amendments to Schedule 13 to the Bill which are consequential to Lords Amendment 117.

# Lords Amendments to Schedule 16: Investigatory powers

## Lords Amendments 135 to 138

157 Lords Amendment 135 would allow for the prescribed information in court orders imposing a monetary penalty for non-compliance with information notices to be included in a separate document accompanying the order rather than in the order itself. This would provide for the different mechanisms for the services and enforcement of orders found in Scotland and Northern Ireland.

158 Lords Amendment 136 would ensure the order or notice accompanying an order imposing monetary penalties can state the appropriate appeal rights available to the respondent according to the relevant jurisdiction at the time of service.

159 Lords Amendment 137 would clarify that a respondent has 14 days from the date of service of an order imposing a monetary penalty for non-compliance with an information notice to apply to the court to request a change to the date or dates by which the penalty, in whole or in part, must be paid.

160 Lords Amendment 138 would clarify that, in Scotland, the interpretation of 'service of the order' includes service of an extract order in execution of or diligence on the order.

## Lords Amendments to Schedule 17: Part 3: minor and consequential amendments

### Lords Amendment 139

- 161 Lords Amendment 139 would make a consequential amendment to the Estate Agents Act 1979 as a result of the repeal of Part 8 of the Enterprise Act 2002 and its replacement by Part 3 of this Bill.
- 162 It would firstly ensure that the power of the lead enforcement authority under the Estate Agents Act 1979 to make orders prohibiting unfit persons from doing estate agency work will continue to be exercisable where the person in question has failed to comply with a relevant undertaking given or relevant enforcement order made under Chapter 3, Part 3 of the Bill.
- 163 This amendment would also make a consequential amendment to the Estate Agents Act 1979 to achieve consistency in how the Estate Agents Act 1979 applies to non-compliance with obligations under both the court-based regime (Chapter 3, Part 3 of the Bill) and the CMA direct enforcement regime (Chapter 4, Part 3 of the Bill). This amendment would therefore enable a lead enforcement authority under the Estate Agents Act 1979 to make an order prohibiting unfit persons from doing estate agency work in cases where the person fails to comply with relevant undertakings given to the CMA or where a person has failed to comply with a final infringement notice given by the CMA, under its direct enforcement regime.

## Lords Amendments to Schedule 19: Commercial practices which are in all circumstances considered unfair

### Lords Amendment 140

- 164 Lords Amendment 140 would insert commercial practices relating to fake reviews to the list of unfair commercial practices in Schedule 19 for the purposes of Part 4.
- 165 New subsection 12A (1) would prohibit the submitting or commissioning of fake consumer reviews or consumer reviews that conceal the fact that they have been incentivised. A description of what a consumer review that conceals the fact that it has been incentivised means is provided by new subsection 12 A (5)(c).
- 166 New subsection 12A (2) would prohibit publishing consumer reviews, or consumer review information, in a misleading way, for example platforms (or third-party traders operating on platforms) publishing consumer reviews in a misleading way by swapping a review of one product to another product (catalogue abuse). A non-exhaustive list of what publishing in a misleading way includes is also provided by new subsection 12 A(5)(i). Definitions of 'consumer review information' and 'publishing' are provided by new subsections 12 A(5)(d) and 12 A (5) (h) respectively.
- 167 New subsection 12A (3) would require traders that publish consumer reviews, or consumer review information, from third parties to take reasonable and proportionate steps to prevent inadvertent publication of fake consumer reviews, consumer reviews that conceal the fact they have been incentivised, or consumer review information that is false or misleading and remove such reviews or information. What are reasonable and proportionate steps would

depend on the circumstances and include assessment of the risk of publication of this false or misleading information.

168 New subsection 12A(4) would prohibit offering services to traders to (a) submit or commission fake consumer reviews, or consumer reviews that conceal the fact they have been incentivised or (b) publish consumer reviews or consumer review information in misleading ways. It would also prohibit offering services to facilitate these commercial practices relating to fake reviews. For example, by offering services that increase the chance of a fake consumer review being successfully posted on a platform or website by virtue of their expertise in bypassing the platform or website's fake review detection measures. Facilitation may also extend to intermediary platforms that are aware of and allow fake consumer review services to be sold by traders on the platform.

169 New subsection 12A(5) would set out definitional information for the purposes of these provisions.

## Lords Amendments after Schedule 19

### Lords Amendment 141

170 Lords Amendment 141 would insert a new schedule after Schedule 19 listing amendments that are consequential on the revocation of the Consumer Protection from Unfair Trading Regulations 2008 and commencement of Chapter 1 of Part 4 of the Bill.

171 The new schedule created by this amendment would amend the following Acts of Parliament to update references made to the Consumer Protection from Unfair Trading Regulations 2008 to Chapter 1 of Part 4 of this Bill:

- a. Section 40 (3A) of The Administration of Justice Act 1970
- b. Section 12(3) of The Trade Descriptions Act 1968
- c. Section 1 (4C) and section 1 (4D) of The Hallmarking Act 1973
- d. Paragraph 1 of Schedule 1 of The Prescription and Limitation (Scotland) Act 1973
- e. Paragraph 17 of Schedule 15D of the Companies Act 1985
- f. Section 114A(2)(bb), section 114B(15), section 204A(2)(bb), section 204B(15) section 297C(2)(bb) and section 297D(15) of The Copyright, Designs and Patents Act 1988
- g. Section 91, section 97(8)(d) and section 98(14) of the Trade Marks Act 1994
- h. Schedule 14 and Schedule 15 of the Enterprise Act 2002
- i. Paragraph 23 of Schedule 4 of the Licencing Act 2003
- j. Schedule 3 of the Regulatory Enforcement and Sanctions Act 2008
- k. Schedule 5 of the Consumer Rights Act 2015
- l. Section 59(6), section 74(3), section 218(3)(b) and section 222(6)(b) of the Online Safety Act 2023



## Lords Amendments to Schedule 20: Excluded contracts

### Lords Amendments 142 to 144

- 172 Lords Amendment 142 would replace the requirement for a trader to be unincorporated in order to benefit from the ‘delivery of foodstuffs’ exclusion to the subscription contracts chapter with the requirement for the trader to be a micro-entity.
- 173 Lords Amendment 143 would set out that, in order to meet the ‘delivery of foodstuffs’ exclusion, a trader would have to meet the definition of ‘micro-entity’ as per the definition set out in section 384A of the Companies Act 2006. This would apply whether a trader was incorporated or not.
- 174 The trader would be considered in scope of the exclusion if, in their first financial year, they had reasonable grounds to believe they would satisfy the qualifying conditions in section 384A to be defined as a micro-entity. If a trader were to be in a year other than their first financial year, a business would have to look to the preceding financial year to determine if they were in scope of the exclusion.
- 175 Lords Amendment 144 is consequential to Amendment 143, and would define the terms ‘company’, ‘first financial year’ and ‘financial year’.

## Lords Amendments to Schedule 25: Chapter 4 of Part 4: Consequential Amendments etc

### Lords Amendments 145 and 146

- 176 Lords Amendments 145 and 146 would insert provisions in Schedule 25 which make consequential amendments to other legislation for the purpose of Chapter 4 of Part 4.
- 177 Lords Amendment 145 would update provisions in the Prescription and Limitation (Scotland) Act 1973, the Limitation Act 1980, the Foreign Limitation Periods Act 1984, and the Limitation (Northern Ireland) Order 1989 (S.I. 1989/1339 (N.I. 11)) which extend limitation periods to facilitate consumer ADR if the deadline would otherwise expire during or immediately following the ADR process.
- 178 Amendment 146 would update section 140AA of the Equality Act 2010, which extends time limits under section 118(1)(a) and (2) of that Act for a claim to facilitate consumer ADR. It would also add Chapter 4 of Part 4 to Schedule 3 of the Regulatory Enforcement and Sanctions Act 2008 (RESA) in line with the inclusion of Chapters 1-3 of Part 4 in that Schedule.

## Lords Amendments to Schedule 26: Provision of investigative assistance to overseas regulators

### Lords Amendment 147

- 179 Lords Amendment 147 would insert a reference to Chapter 2 of Part 5 into Schedules 14 and 15 to the Enterprise Act 2002.
- 180 The addition to Schedule 14 would mean that information that comes to a public authority in connection with the exercise of its functions under Chapter 2 of Part 5 of the Bill (investigative assistance) is categorised as “specified information” to which section 237 in Part 9 of the Enterprise Act 2002 applies. Section 237 imposes a general restriction on disclosure of certain



kinds of information unless permitted under one of the information disclosure gateways in Part 9 of that Act.

- 181 The addition to Schedule 15 would mean that information which comes to a public authority in connection with the exercise of competition and consumer enforcement functions can be disclosed (under the gateway in section 241 of the Enterprise Act 2002) to another public authority for the purposes of enabling that authority to carry out its functions under Chapter 2 of Part 5 of the Bill.

## Lords Amendments after Schedule 27

### Lords Amendment 148

- 182 Lords Amendment 148 would add a new schedule for the purposes of making amendments to other pieces of legislation required as a result of provision made by the Bill regarding competition, consumer enforcement, unfair trading and the provision of investigative assistance to overseas regulators. It would amend other enactments in order to: disapply the provisions regarding the extra territorial reach of the information gathering power at section 109 of the Enterprise Act 2002, and the reforms to the civil sanctions regime which enforces it, where that power is applied for non-merger control purposes by other enactments; amend information sharing gateways in other legislation to add Chapter 1 of Part 4, and Chapter 2 of Part 5 of the Bill; consolidate amendments made by this Bill to Section 393 of the Communications Act 2003; enable Ofcom to share information it has obtained in exercise of its powers under the Wireless Telegraphy Act 2006 and the Postal Services Act 2011 with the CMA where it is necessary for the CMA to exercise its statutory functions under Part 1 of the Bill; and update legislation which referred to Part 8 of the Enterprise Act 2002, which is repealed by Part 3 and replaced with that Part and other Parts of this Bill.

## Financial Effects of Lords Amendments

- 183 Lords Amendment 35 allows the CMA to make rules about how the levy charged on designated undertakings in relation to the digital markets regime should be paid, and Lords Amendment 36 allows the CMA to make rules about interest to be charged on amounts of that levy that are paid late. The existing ways and means resolution for the Bill covers the levy and so would cover these amendments (if cover is needed).
- 184 Lords Amendments 42, 112, 117, 128, 132, 133 and 134 require the CMA, where the Secretary of State has given notice, to perform various investigations in relation to a merger involving a foreign power and a newspaper enterprise. This investigation regime is based on, and similar to, the existing investigation regimes for other types of merger. The existing money resolution for the Bill authorises expenditure by the Secretary of State and the CMA in relation to the Bill so would cover these amendments (if cover is needed).
- 185 There are no financial implications in relation to the other Lords amendments.

# DIGITAL MARKETS, COMPETITION AND CONSUMERS BILL

## EXPLANATORY NOTES ON LORDS AMENDMENTS

These Explanatory Notes relate to the Lords Amendments to the Digital Markets, Competition and Consumers Bill as brought from the House of Lords on 27 March 2024.

---

Ordered by the House of Commons to be printed, 27 March 2024

---

© Parliamentary copyright 2024

This publication may be reproduced under the terms of the Open Parliament Licence which is published at [www.parliament.uk/site-information/copyright](http://www.parliament.uk/site-information/copyright)

PUBLISHED BY AUTHORITY OF THE HOUSE OF COMMONS