

*Department for Business, Energy and Industrial Strategy: Reforming
Competition and Consumer Policy*

RESPONSE TO CONSULTATION

Background

The CAA Consumer Panel is a non-statutory critical friend, giving expert advice to the Civil Aviation Authority (CAA) as policy is being developed, and making sure the consumer interest is central. The Panel's objective is to champion the interest of consumers.

General comments

The Panel very much welcomes this consultation and the proposals to enhance consumer rights and ensure those rights are robustly enforced.

As a general point, we note the consultation document is lengthy, at over 140 pages in total. Whilst it was possible to request the document in an accessible format (for example to ensure compatibility with assistive technologies such as screen readers), it is good practice to provide consultations, in particular those on consumer issues and which have particular application to consumers at risk of vulnerability, in more accessible formats such as Easy Read. This ought to help engage a wider audience with policy making.

Preventing online exploitation of consumer behaviour

We support many of the proposals contained within the consultation, including updating consumer rights in relation to online shopping, subscriptions, reviews, and contract terms. We agree that consumers should be able to exercise effective choice and that this is important for competition. In this regard we think it is important that more is done to understand evolving practices such as personalised pricing. This is the practice of sellers charging different prices to individual buyers based on what is observable about them. Its aim is to assess the price sensitivity of individual buyers in order to set prices accordingly, and it is ideally suited to digital markets. Whilst price discrimination can be beneficial and increase market participation, it is also possible it could lead to detriment, particularly for more vulnerable groups of consumers, who may search less or have specific needs when booking a journey. This is an area which could have cross-sectoral relevance and therefore collaboration between Government and regulators, including as approaches develop, could be fruitful.

Drip pricing

On the question of drip pricing, previous work (including that carried out by the Office of Fair Trading in 2010 into *Advertising of Prices*) demonstrates that clear, honest, upfront advertising of prices is beneficial to both consumers and competition. The OFT report considered various price framing practices and found 'drip pricing' to have the most potential to mislead consumers. The report pointed out that not only do consumers need to be confident that the advertising they see meets appropriate standards, but fair dealing businesses need to be confident that firms using unfair pricing practices will be subject to effective enforcement action. It is therefore important that drip pricing is addressed. In the aviation sector, we note the CAA carried out previous work looking at [seat allocation](#) and considered search costs as part of that work. Clearly the Covid-19 pandemic has had a very large impact on the aviation sector. However, as recovery gathers pace airlines will look to recoup losses, and we would expect the CAA and the Government to remain very much alive to poor pricing practices which may cause consumer detriment. The issue is a complex one, and it is important that the regulator has the right tools at its disposal to tackle detrimental practices should they arise.

Civil consumer enforcement powers

Clear consumer rights form the basis for a vibrant market where consumers can shop around, exercise choice and vote with their feet. However, without effective enforcement to back them up and act as a deterrent to bad behaviour, consumers cannot exercise those rights in reality. We therefore support the proposals to empower the Competition and Markets Authority (CMA) to enforce consumer law directly rather than through the civil courts. Such a change would allow the CMA to take robust action in a timely way. The CMA is able to look across the economy, tackling practices that could have application in more than one sector and can share lessons, learning and expertise. For these reasons we also agree that the CMA should retain a similar enforcement scope under an administrative model to what it has currently.

Alongside the proposals relating to the CMA, we very strongly believe the time is right to reform sectoral regulators' civil consumer enforcement powers. The Panel has [previously noted](#) that the CAA's consumer enforcement powers are not well suited to swift action, with considerable periods of time taken for cases to come before the courts, meaning businesses are able to continue breaching the law without sanction over this period. At present, the tools available differ depending on the specific piece of legislation which a business is breaching and are not proportionate when trying to address persistent but minor breaches. Where action is taken using powers provided by the Enterprise Act, these serve to prevent future infringements but do not penalise businesses for activity already undertaken and therefore do not provide an effective deterrent where there are commercial gains to be made. This can lead to situations where consumers are out of pocket or continue to face detriment for lengthy periods.