

20 March 2024

House of Lords  
London  
SW1A 0PW

Dear Lord Leong and Lord Clement-Jones

Thank you for your constructive engagement during the second day of Report Stage of the Digital Markets, Competition and Consumers (DMCC) Bill on Wednesday 13 March. During the debate, I said that I would write to you on three issues.

### **Working Group on Product Recalls and Safety**

You asked when this group last met. Having completed its work, including issuing a report to Government in March 2017, the Working Group on Product Recalls and Safety last met in November 2017. The recommendations of the Working Group contributed to the establishment of the Office for Product Safety and Standards (OPSS) in 2018. OPSS maintains close links with the stakeholders represented on the Working Group, some of whom have been involved in specific workstreams, including on white goods, button batteries and e-bikes.

More generally, OPSS engages widely with a range of stakeholders, including business, consumer representative organisations, product safety specialists, academia and medical professionals. As I mentioned in my closing speech, this includes engagement on the recent Product Safety Review consultation, where we are currently considering the responses received.

### **Civil enforcement against unfair trading practices**

You asked what the guarantee is that there will be an effective enforcement regime to enforce the provisions in paragraph 14 of Schedule 19. You also asked for more particulars and assurance in this respect. Part 3 of the Bill strengthens the court-based civil enforcement regime for breaches of specified consumer protection legislation (including Part 4, Chapter 1 of the Bill that continues to ban the promotion of imitation products) through the introduction of monetary penalties of up to 10% of global turnover.

This is a considerable enhancement from the existing position, where enforcement orders predominantly focus on securing future conduct rather than sanctioning past infringements. As well as ensuring individual infringers are adequately sanctioned, we believe this will also

have a significant wider deterrent effect, driving down the incidence of unfair trading and other infringements of consumer law.

As to how the volume of enforcement can be increased, the new CMA direct enforcement regime introduced by the Bill will increase the efficiency of enforcement and should therefore enable the CMA to increase both the speed and volume of cases. The extension of the power to apply for online interface orders to all public enforcers, which the government brought forward at Report, will improve the ability of those tackling unfair trading practices to remove harmful and infringing content directed at consumers online.

Further, by giving the courts and the CMA (respectively) the power to impose financial penalties on those who fail to comply with information notice requests, the Bill significantly enhances enforcers' ability to efficiently obtain the information that they need to take enforcement action under Part 3.

Taken together, the government is confident that these reforms will materially improve the volume and effectiveness of civil enforcement activity. As such, we do not think it appropriate to make further reforms to tackle the sale of imitation products at this time, though we will continue to keep the situation under review. Finally, it is worth noting that infringements of paragraph 14 of Schedule 19 are also criminal offences and therefore enforceable through the criminal courts.

### **CMA's approach to Primary Authority advice**

I also take the opportunity to address your question on the CMA's approach to advice given to businesses by Primary Authority. While the government recognises the importance of engagement between national regulators and Primary Authorities, we do not believe this does or should extend to the CMA being bound by Primary Authority advice. We would, though, expect Primary Authorities to have regard to relevant CMA guidance on consumer protection law.

This arrangement strikes the right balance between ensuring the Primary Authority regime is of real benefit to businesses, while not inappropriately undermining the CMA's function as the leading national consumer regulator or diverting its resources from enforcement to advice assurance at a local level.

As I said during the debate on this issue at Report, it is common practice for the CMA to consult Primary Authorities before commencing enforcement action, so we consider it unlikely that CMA enforcement action will unreasonably sanction businesses that have followed Primary Authority advice in good faith.

The CMA is also empowered to accept undertakings, which are an alternative to giving a final infringement or online interface notice and give greater flexibility to the CMA as it seeks to resolve infringements.

I hope what I have set out above is helpful. I will place a copy of this letter in the libraries of both Houses.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Malcolm Offord", with a horizontal line drawn underneath it.

**Lord Offord of Garvel CVO  
Parliamentary Under Secretary of State  
Department for Business and Trade**