



**Ukie response to  
the Department  
for Business,  
Energy and  
Industrial  
Strategy's  
consultation on  
reforming  
competition and  
consumer policy**

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## **UK Interactive Entertainment response to the Department for Business, Energy and Industrial Strategy's consultation on reforming competition and consumer policy.**

### **Introduction**

1. Ukie is the trade body for the UK's games and interactive entertainment industry. A not-for-profit, it represents more than 500 games businesses of all sizes from start-ups to multinational developers, publishers, and service companies, working across online, mobile, console, PC, esports, virtual reality and augmented reality. Ukie aims to support, grow, and promote member businesses and the wider UK games and interactive entertainment industry by optimising the economic, cultural, political, and social environment needed for businesses in our sector to thrive.
2. The UK video games industry is an economic powerhouse as well as a hotbed for the development of emerging technologies, supporting nearly 50,000 FTEs and providing £2.87billion in gross value add to the UK economy. On top of this, the games industry is 35% more productive than the UK industrial average and is spread across all four nations from Dundee to Belfast, Cardiff to Newcastle.
3. Video games are also a significant part of modern popular culture with broad appeal to a diverse audience, with 86% of people aged 16-69 in the UK having played games in 2020 as well as an even gender split<sup>1</sup>. With an estimated 44.32million video games players in the UK, it comes as no surprise that the UK is the 6th largest market for games in the world, sitting just below China, the United States, Japan, South Korea and Germany. The coronavirus pandemic has demonstrated the value of games more than ever before, as millions of people turned to games to maintain their social connections and keep entertained. It was because of this access to a wide audience that the government worked with the games industry to share pandemic public health messaging during the peak of the pandemic.
4. Ukie welcomes the opportunity to submit evidence to the Reforming competition and consumer policy consultation to assist in its assessment of whether the current Competition and consumer policies are achieving the aim of creating free, open, and competitive markets with high consumer standards that drive growth, innovation, and productivity. We agree that a robust regulatory framework which supports healthy competition is crucial to the effective functioning of the economy and supporting both businesses and consumers. We look forward to working with the government to maintain an environment that makes the UK the best place to make, sell and play games<sup>2</sup>.

### **Summary**

5. This paper addresses only those proposals we feel are directly relevant to the UK games industry and therefore represents a position paper rather than a full response to the consultation. In particular we would like to provide a high-level overview of our consideration of the proposals surrounding the future powers and operation of the CMA post-Brexit, and also cover more specifically the consumer rights issues addressed in

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<sup>1</sup> <https://info.savanta.com/uk-gaming-attitudes-and-behaviours>

<sup>2</sup> <https://ukie.org.uk/regional-economic-report>

Chapter 2 of the consultation.

6. The video games industry is built on innovation and between the years 2015-2017, the UK games industry attracted £1.75bn in inward investment. It is crucial that any future competition regime allows our industry the freedom to continue to innovate and develop technologies that have wider applications across society.
7. We agree that the existing consumer protection legal framework is currently working well. The strength of the existing regime in the UK is a solid footing both for consumer rights and for businesses to succeed, achieving the right balance between consumer protection and business ability to innovate new business models.
8. Video games in 2021 are deep, multifaceted experiences. Like every other creative industry, the move to an online world has created new opportunities and challenges for the games industry. Many games are now developed to include various live services and special events, enjoyed for years by thriving communities of players. This expectation for evergreen experiences, with regular content updates and ongoing live services has caused production costs to increase consistently. To continue to develop these compelling stories, experiences, events and features, some of the largest games now have higher budgets than major film productions.
9. This incredible diversity of content, and of audience needs, requires a similar diversity of business models. The games industry has innovated in response, working to make games accessible to all.
10. Whether to support free-to-play games or to allow for deep, extended live services in premium games, in-game purchases has become a crucial part of the evolution of the games industry. Not all games include in-game purchases, but those that do span across all platforms and genres.
11. The industry is strongly committed to consumer and player transparency. There is an existing legislative framework to protect consumers, supported by specific guidelines that apply to the sector such as the CMA's principles for online and app-based games. The video games industry goes beyond these requirements through the PEGI age-ratings system, which provides detailed and clear information to consumers before purchase.
12. This commitment has recently been enhanced through three specific transparency measures on in-game purchases:
  - a) a PEGI in-game purchase icon, introduced in 2018, informing the consumer prior to purchase of the presence of optional in-game purchases,
  - b) additional information to be included on the in-game purchase icon where paid random items are present in the game, and
  - c) platform and publisher members of Ukie have, since 2020, had policies in place requiring that any video game that is published on their platforms disclose information of the probability of receiving paid random items in an easily understandable and clear manner.
13. Transparent, upfront information prior to purchase is available to the consumer, and specific safeguards and tools are in place to ensure players, parents, guardians and carers can remain in control. Such controls allow players, parents, guardians and carers to disable spending, set spending limits and monitor spending for children. The industry

is continually improving how players, parents, guardians and carers can access, monitor and control this activity.

14. In addition, Ukie has launched information campaigns targeting players, parents and carers to bring awareness and encourage use of parental control tools and pre-purchase information provided by the industry. This is a practice replicated across the world.
15. The industry goes to great lengths to provide players with simple processes and readily available details to contact customer service teams if players are unhappy.
16. We are proud of the industry's demonstrable and long-standing history of taking its responsibility to keep players safe extremely seriously, protecting their rights including under consumer law as well as competition law, and of its efforts to provide a variety of tools as well as accessible advice on how to use them. The industry continues to invest significantly in running national advertising campaigns to promote the availability of such parental tools, including the recent "Get Smart about P.L.A.Y."<sup>2</sup> and "Get Set Go!"<sup>3</sup> campaigns with English footballers Rio Ferdinand and Ian Wright.

#### **Competition policy: the powers and operation of the CMA**

17. We appreciate that the government aims to prioritise innovation and growth when it comes to the reformation of competition and consumer policy. We also understand that as a result of Brexit, the CMA now has a greater responsibility in enforcing competition policy than before.
18. With this in mind, in terms of what metrics and indicators the CMA should use to better understand and monitor the state of competition in the UK in order to operate effectively, we believe innovation should be considered at the core of assessing the effectiveness of competition policy. This would align with wider proposals by the government to embed competition and innovation into the Regulatory Code.
19. Indeed, a strong indicator of whether competition policy is working effectively is the level of innovation. As a result, the CMA and government should consider monitoring innovation as a metric of the state of competition in the UK - which could be seen through the introduction of new products and technologies as well as increased levels of investment into Research & Development.

#### **1.33: A more active role for government in setting the strategic direction of the UK's competition policy**

20. In principle, we believe it would be useful for the CMA to receive more detailed and regular steers from the government, as set out in the consultation. However, we also equally must stress the importance of the CMA's independence. A key strength of the current regime is the extent to which it is insulated from political influence, with decisions taken by impartial and independent regulators.

#### **1.36: State of Competition reports**

21. It is also crucial for the CMA to be in a position to accurately advise the government on the state of competition in the UK. However, we advise caution on whether the CMA should be granted further powers to obtain evidence for this purpose.

- 22.** This is due to already existing tools, resources and process at their disposal, including market and competition law investigations. There is also significant relevant publicly available information that can help to inform government on the state of competition in the UK in academic literature as well as more general reporting on innovation, introduction of new products and new technologies. Giving the CMA a new power in addition to its market investigation, competition investigation and merger review powers and its ready access to other categories of information mentioned above should be approached with caution. The scope of any new power should be limited to ensure there is a substantial legitimate need for requesting information and that the request is proportionate and not unduly burdensome on industry.
- 23.** On top of this, responding to regulator requests for information can be time consuming, disruptive and costly for companies. They require large amounts of internal resource as well as external resources such as lawyers and other support services. Requiring a company to respond to RFIs outside the current situations (for example, where a company is suspected of having infringed the competition rules or where a particular market does not appear to be working well for consumers in line) should be approached with extreme caution as opposed to giving the CMA an unfettered right to request information in the absence of any competition law issue related to that individual company.

#### **1.45: More effective market inquiries**

##### **1.58: Proposal 1**

- 24.** Changing the market study and investigation process to permit the imposition of certain remedies at the end of the market study phase should be considered with caution. In market studies, parties typically have very little access to, or visibility of, regulators' processes and decision making. Changing the market study and investigation process in this way will require a careful balancing of procedural efficiency against the parties' rights of defence and the rights of complainants to be heard. If remedies are to be imposed at this stage, the transparency of the market study process should be increased significantly and measures put in place to ensure that the rights of all affected parties are protected.

##### **1.63: Proposal 2**

- 25.** Regarding the proposal to replace the existing market study and market investigation system with a single stage market inquiry tool, we believe that one strength of the current two-stage process is that it allows for a greater degree of thorough scrutiny from panel members with diverse backgrounds. The suggestion in Proposal 2 to appoint independent decision makers drawn from the CMA Panel for binding remedies could maintain this strength.
- 26.** Finally, we believe that allowing the CMA to impose interim measures before any view on where there is a competition law issue to be addressed may be disproportionate. This could risk harming innovation and subsequently the UK's competitiveness on the global stage.

#### **1.81: A more flexible design process for market investigation remedies**

27. We have no issue with testing consumer responses to proposed interventions in principle, however any new power to require businesses to participate in implementation trials should be strictly limited to cases where implementation trials are objectively needed and proportionality should be taken into account. Adequate safeguards should be put in place to ensure that remedies would not become subject to frequent and unnecessary reviews. As a result we agree with the suggestion that a mandatory cooling off period of several years would need to expire before the CMA could revisit the operation of a remedy (unless both the CMA and the affected party in question agree that the remedy should be revisited where they agree this is clearly in the best interests of all affected).
28. Market inquiries could become more efficient with additional resources and funding provided for the CMA in order for them to increase the number of case handlers, and/or hire highly skilled and experienced case handlers.

### **1.98: Updating turnover thresholds**

29. Increasing the turnover threshold from £75m to £100m to account for inflation and a £10m safe harbour carve out seems reasonable. However, the proposal to allow the CMA to review a merger if any party has at least 25% share of supply of a particular good or service in the UK, or a substantial part of the UK, and has a UK turnover of more than £100 million, would be a huge change to the existing jurisdictional thresholds.
30. It would in effect mean that all transactions involving larger entities will be caught regardless of the size and competitive importance of the party being acquired, and regardless of whether there are any overlaps in the markets in which the merging parties operate. This is disproportionate, it will increase costs and is likely to have a negative effect on innovation as it may deter companies from entering into transactions in the first place. There is also a question of how the CMA will handle and manage this extra workload, and whether this would impact the effectiveness of its wider operations. Businesses involved in transactions that do not justify the time and costs associated with a full filing will be left to rely on the CMA's approach that it will exercise its discretion to call-in transactions or to engage with the (non-statutory) briefing paper process. This new jurisdictional test is too broad in our view and pulls in too many transactions that could be subjected to review. This new jurisdictional limb should be limited further so that it only covers transactions that have the potential to affect competition.

## **Consumer policy: Giving consumers a clear choice on what they are signing up for**

### **2.16 & 2.17 Clarity of subscription**

31. Our members have worked closely with regulators over the last decade to ensure transparency in the way they operate and to provide consumers/players with the information they need to make informed choices. Clarifying the pre-contract information requirements for subscription contracts is consistent with industry practice at the moment and our sector works hard to continually improve

With this in mind, we also caution and express the need for traders to have flexibility when it comes to designing their purchase flows, including what screens are best suited to convey material information. Our industry would like to prevent providing repetitive or overwhelming amounts of text or information to the consumer. There should be reasonable flexibility allowed to traders to innovate and find engaging ways to comply with existing material

disclosure requirements, in a way that cuts through to the consumer

### **2.18 Auto-renew**

**32.** The proposal to strengthen the law to always offer the consumer the opportunity for a fixed term commitment, and for the option for auto-renewal for a subscription based contract to be always opt-in, may present negative impact on consumer experience of the games industry. We believe that there is already sufficient information available to the consumer prior to and at the point of purchase. Providing limited and fixed term commitments as the default option could affect pricing and as a result likely represent poor value for money for the consumer.

**33.** Beyond offering our consumers the best value for money in purely financial terms, the games industry uses rolling subscription commitments to facilitate the ways in which games are increasingly enjoyed today. As referenced above, games are far more than static and simple content; instead they provide rich immersive environments where players build experiences, achievements and communities online. Subscriptions are a vital and cost-effective way for both the business and the consumer in which this can be supported. Again, by making this an opt-in by default, consumers are likely to be worse off.

### **2.24: Reminders as free trials and introductory offers end**

**34.** It is reasonable to require traders to provide consumers with a reminder that a "full or higher price" ongoing contract is about to begin.

**35.** However, we are concerned that requiring traders to obtain the consumer's explicit consent to continue the subscription after the end of a free trial or low cost introductory offer is unreasonable. Current laws already require traders to provide transparent information including in reminder emails which inform the consumer the full price that will be charged and how to cancel subscriptions before a free trial or introductory period ends.

### **2.25 long-term inactive subscriptions:**

**36.** For a similar reason to our views regarding auto-renewal, long-term inactive subscriptions are not always an indication that the subscription is no longer required. The nature of games as online experiences, with progression, experience points and content saved within the account means there are various legitimate reasons for accounts to remain inactive but subscribed to. Consumers will be best protected where a balance is struck between not being tied in and not being pre-emptively removed from a subscription.

**37.** In addition to our concerns outlined above, there is a question over how 'inactivity' would be defined and how this would impact consumers with passive games-related subscriptions. Some subscription services do not require "active" participation and use by a consumer. For example, someone may use a cloud storage solution for digital assets.

**38.** There would, as a result, be significant commercial impact on traders as they would need to ensure that "inactivity" is captured correctly. This engineering cost to implement may then result in higher costs for consumers.

39. We believe that provisions to remind account holders of their ongoing commitments, rather than suspension of contracts would be sufficient in the context of games, as indicated at paragraph 2.20 *“strengthening the law by expressly requiring traders to remind consumers before the end of any commitment period that the contract will auto-renew unless cancelled. The purpose would be to provide maximum transparency to the consumer, so they are prompted and able to make informed choices about retaining subscription contracts”*
40. However, should this proposal become law, then the timeframe of inactivity should be reasonable and significant due to the reasons outlines above and to prevent consumers from having their subscriptions unexpectedly terminated.

## 2.28 Subscription

41. We are concerned with the potentially unreasonable prescriptive nature of a proposal in paragraph 2.28 related to the cancellation of subscription contracts. The proposal goes as far as to suggest a number of clicks such a process should entail. While we agree that traders should provide consumers with cancellation mechanisms that are straightforward, cost-effective, and timely, prescriptive requirements such as the number of clicks, do not take into account varied technologies, security practices and experiences that may help consumers make informed choices.
42. On the technology point, for example, more clicks may be consumer-friendly on a smaller screen such as a mobile phone, because it enables less information to be squeezed onto each screen.
43. With regard to security, traders should explicitly be permitted to require consumers to sign into an account or otherwise authenticate the user in order to cancel. This is an important for fraud prevention.
44. Finally, traders should be permitted to provide a reasonable amount of information regarding the impact of exiting a contract in cancellation flows. This enables consumers to make informed choices. For example, traders should be able to inform consumers that exiting the contract will cause them to lose access to content, such as high scores or their avatar. Traders should also be permitted to provide information regarding alternative subscriptions that may better suit the consumer’s needs. For example, if a consumer is exiting a yearly subscription, traders should be able to inform the consumer that a monthly option (which may fit their budget better) is also available.
45. While such messaging can be both vital and helpful, we acknowledge that it can become excessive and potentially complicate the exiting process – which is why a flexible “straightforward, cost-effective and timely” standard makes sense.
46. Once again, our industry is absolutely committed to providing transparency to our consumers. However, we caution against the current specificity that is suggested in the current consultation. The industry already abides by existing consumer laws as they are implemented by the Government, including but not limited to the Consumer Rights Act 2015, the Consumer Protection from Unfair Trading Regulations, and the CMA’s Principles for Online and App-based Games. Although we agree that consumers should have the freedom to exit contracts easily, mandating the exact mechanism for how this should be done could prove difficult for an industry such as ours which is diverse both in



the way in which businesses operate, and the content that it creates.