

# LEGISLATIVE CONSENT MEMORANDUM

## DIGITAL MARKETS COMPETITION AND CONSUMERS ACT 2024

### Background

1. This memorandum has been laid before the Assembly by the Minister for the Economy under Standing Order 42A(4)(b). The Digital Markets, Competition and Consumers Act 2024 received Royal Assent on 24<sup>th</sup> May 2024. The Act and Explanatory Notes are attached separately.

### Summary of the Act and its policy objectives

2. The Digital Markets, Competition and Consumers Act 2024 (the Act) creates a new regime to increase competition in digital markets by conferring powers and duties on the Competition and Markets Authority (“CMA”) to regulate competition in these markets; updates powers to investigate and enforce competition law; updates and enhances powers to investigate and enforce consumer protection law and resolve consumer disputes; and gives consumers protections in respect of unfair commercial practices, subscription traps and prepayments to savings schemes.
3. The aim of the Act is to establish a new pro-competition regime for digital markets, strengthen some consumer law enforcement powers, introduce a raft of reforms to the existing competition laws including merger control, market studies and investigations and strengthen the competition enforcement powers of the Competition and Markets Authority (CMA).
4. Most of the provisions in the Act are reserved matters. The regulation of anti-competitive practices and agreements, abuse of

dominant position, monopolies and mergers, and internet services, are reserved to the UK Government, and as such Parts 1 and 2 of the Bill are reserved but will apply in the North of Ireland. Some provisions of Parts 3, 4 and 5 of the Bill deal with certain aspects of consumer law which are within the legislative competence of the Assembly and concern a number of other Departments.

### **Provisions which deal with a Devolution Matter**

5. Some of the provisions of the Act fall under the legislative competence of the Assembly, as they deal with devolved matters. In the absence of a devolved Assembly, officials in the Department for Business and Trade (DBT) engaged with a number of Executive Departments regarding the impact of some provisions on their respective roles.
6. Part 3 deals with Enforcement of Consumer Protection Law and in particular replaces Part 8 of the Enterprise Act 2002 for conduct which takes place after commencement of the Act. The effect is intended to make amendments to consumer law to reform the manner of its enforcement.
7. Part 4 deals with Consumer Rights and Disputes. In particular, Chapter 1 does the following-
  - prohibits unfair commercial practices, replacing the Consumer Protection from Unfair Trading Regulations 2008 which applies UK wide and implemented a EU Directive. (This concerns a number of NI Departments.)
  - imposes duties on traders in relation to subscription contracts, provides rights for consumers if those duties are breached and provides rights for consumers to cancel subscription contracts during cooling-off periods.
  - gives protections to consumers in respect of payments to consumer saving scheme contracts. (This is a reserved matter as it concerns financial services.)
  - prohibits alternative dispute resolution procedures for consumer contracts where the provider is not accredited nor exempt and makes provision for accreditation and exemption, related requirements and enforcement.

8. Part 5 deals with miscellaneous matters. These include:
- making amendments in relation to the powers and functions of the CMA and other regulators of cross-cutting application;
  - the introduction of a duty of expedition in relation to competition, consumer and digital markets functions; and
  - powers in relation to the sharing of information and ability to provide investigative assistance to international partners.

### **Position in other devolved Administrations**

9. The measures in the Act extend to the whole of the United Kingdom. Some consumer protection policy is transferred to the North of Ireland although many key aspects of consumer protection including competition policy, including where it relates to digital markets and internet services, product safety, financial services and insurance, are reserved to Westminster.

### **Reasons for making the Provisions**

10. The provisions mean that consumers in the North of Ireland will have greater protection in relation to competition in digital markets. Changes to enforcement of consumer law and consumer rights and disputes will also ensure that there continues to be a consistent enforcement regime across the UK.

### **Reasons for utilising the Act rather than an Act of the Assembly**

11. Most of the provisions will be applied across the UK as they relate to reserved matters. Those provisions which do fall within the competence of the Assembly are beneficial to consumers and if the North was to develop its own legislative proposals, this would result in significant delay and consumers would be disadvantaged. It is beneficial to consumers and enforcement bodies to ensure a consistent legislative and enforcement regime across the UK at the earliest possible opportunity.
12. The Act also amends NI primary legislation and to make those changes through an Act of the Assembly would have extended the timeframe considerably.

## **Reasons for not seeking consent of the Assembly**

13. DBT started proceedings through Westminster on 25th April 2023 when no Assembly was in place and it received Royal Assent on 24<sup>th</sup> May 2024. Consequently, there was insufficient time to complete the full LCM process in accordance with the guidance.

## **Consultation**

14. In July 2021, the British Government published two consultations on these proposed reforms. One set out its proposed reforms to competition and consumer policy, following publication of the Penrose Report. The other set out a new pro-competition regime for digital markets, which drew on recommendations from the Furman Report in 2019 and the Digital Markets Taskforce in 2020. In April 2022, the British Government published its response to the first consultation setting out the reforms which it intended to proceed with in relation to the competition and consumer law regimes.

## **Human Rights and Equality**

15. The provisions in the Act are considered to be compatible with the European Convention on Human Rights.
16. There are no equality issues; none of the measures will have any differential impact on any of the Section 75 groups.

## **Financial Implications**

17. There are likely to be no financial implications.

## **Summary of Regulatory Impact**

18. A regulatory impact assessment is not required as the extension of the provisions within the Act to include the North of Ireland will not result in any cost to business, charities, social enterprise or public bodies.

## **Engagement to date with the Committee for the Economy**

19. The Act was developed and progressed through the parliamentary process over the past two years and there has not been any previous engagement with the Economy Committee.

## **Conclusion**

20. The view of the Minister for the Economy is that the provisions contained within the Act that are within the devolved competence of the Assembly are positive enhancements to the consumer protection regime and the extension of the Act to the North of Ireland is welcomed.

**Department for the Economy**

**15 August 2024**