



# HOUSE OF LORDS

Select Committee on the Constitution

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Lord Offord of Garvel  
Parliamentary Under Secretary of State  
Department for Business and Trade  
Old Admiralty Building  
Admiralty Place  
London  
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By email

5 January 2024

Dear Lord Offord,

## **Digital Markets, Competition and Consumers Bill**

I write on behalf of the Constitution Committee about the Digital Markets, Competition and Consumers Bill. In our view the Bill raises two issues of constitutional interest, which I have outlined below.

### Clause 6: Henry VIII power

Clause 6 contains a Henry VIII power enabling the Secretary of State to amend the list of conditions defining an undertaking which has a position of strategic significance. This is a broad power, for which the Delegated Powers and Regulatory Reform Committee has requested further explanation.<sup>1</sup> We echo that committee's request.

### Clauses 114, 198, 209 and 211

Clauses 114, 198 and 211 place requirements on the Competition and Markets Authority to publish respectively guidance on how it will fulfil its functions under Part 1 of the Bill, a statement of policy in relation to monetary penalties, and guidance on its general approach to the carrying out of its direct enforcement functions. Clause 209 enables the CMA to make rules about procedural and other matters in connection with the carrying out of its direct enforcement functions. In each case the CMA must consult and obtain the consent of the Secretary of State before publication of the guidance or statement of policy.

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<sup>1</sup> Delegated Powers and Regulatory Reform Committee, [3<sup>rd</sup> Report of Session 2023–24](#), HL Paper 26

However, we are concerned that no time limit is applied as to when the Secretary of State's consent must be given. This may result in long delays before the CMA can fulfil its duties under the Bill, which may hinder its ability to regulate digital markets and undermine legal certainty. Further, the Secretary of State may refuse to consent, or require modifications before doing so, to an extent which could compromise the independence of the CMA. We invite the Minister to address these concerns.

Yours sincerely,

A handwritten signature in cursive script, appearing to read 'Drake', written in black ink.

Baroness Drake CBE  
Chair of the Constitution Committee