

Reporting on Better Regulation

Simplifying and minimising the burdens of regulatory functions – a summary of Better Regulation compliance measures carried out by the Competition and Markets Authority in 2014-15

Introduction

Following reforms to the arrangements for competition, consumer protection and consumer credit regulation, on 1 April 2014 the Competition and Markets Authority (CMA) formally assumed its powers. This is the CMA's first report under the UK's new competition and consumer regime, and in exercising our functions in this first year we have continued the work of our predecessors in support of the government's commitment to deliver less regulation, better regulation and regulation as a last resort.¹

Table A.1 below serves the purpose of meeting the CMA's duty, under Part 4 of the Regulatory Enforcement and Sanctions Act 2008, to report on its compliance with better regulation law its duty under the Act to avoid imposing or maintaining unnecessary burdens on business in performing regulatory functions. The great majority of the work of the CMA, in particular the conduct of market studies and the enforcement of competition law, is undertaken under provisions which either do not confer 'regulatory functions' for the purposes of the Act, or confer functions under competition or mergers law which are expressly excluded from its controls. The CMA's primary statutory duty is to promote competition, both within and outside of the United Kingdom, for the benefit of UK consumers and it has, in any event, no power to make rules or otherwise impose burdens affecting businesses generally. Our interventions take place in relation to specific businesses or markets and we intervene only in the light of clear evidence of market failure and/or breaches of law that threaten the proper working of markets. The CMA is, however, fully committed, across all its work to the policy goals underlying the government's better regulation agenda.

¹ The government's regulatory policy is outlined in *Reducing regulation made simple* (HM Government, December 2010) and in the *Regulators' Code* (Department for Business, Innovation & Skills – Better Regulation Delivery Office, April 2014).

Table A.1: Actions undertaken in 2014/15 to promote better regulation

Work area	Relevant objectives	Actions in 2014-15
Transparency	Provide clear, accessible information on how we do our work, what we are doing, how we engage with stakeholders, including how complaints can be made, to ensure that our work is visible and carried out in a way that minimises burdens and increases our accountability.	<p>We published impact indicators (discussed further below) on our website in line with a commitment in our 2014-15 Annual Plan.</p> <p>For all our cases we acted in accordance with commitments set out in our statement of policy and approach to transparency and disclosure.² This included publishing case opening summaries and appropriate updates and case milestones on our website for our cases. Details of our complaints procedure, our board’s register of interests and the expenses incurred by board and panel members are also published online.³</p> <p>We publish a range of other relevant information, including the outcomes of phase 1 mergers, our board’s register of interests and the expenses incurred by board and panel members.</p>
Stakeholder engagement	Develop simple and straightforward ways to engage stakeholders, including particularly businesses and business representatives, implementing mechanisms to engage those impacted by our work so as to improve the targeting of our work and increase our accountability.	We have an established network of senior managers and leaders who are responsible for one or more groups of stakeholders, eg business, legal, government, or consumer. Through these stakeholder relationship managers and other avenues we have engaged widely and proactively with a diverse group of stakeholders on our projects and corporate activities. This includes developing a broad consumer network whom we can involve to bring their experiences and perspectives to our work. For example, we have hosted events in Cardiff and Edinburgh on our Annual Plan consultation and seven ‘ideas sessions’ for our Low Income Consumers project.

² *Transparency and disclosure: Statement of the CMA’s policy and approach (CMA6)*, January 2014.

³ www.gov.uk/government/organisations/competition-and-markets-authority/about/complaints-procedure.

Work area	Relevant objectives	Actions in 2014-15
Stakeholder engagement	<p>Agree a set of protocols and ways of working with our national partners so as to ensure that the regime operates effectively and consistently to the benefit of consumers, and with minimum duplicative or otherwise unnecessary impact on businesses.</p> <p>Engage with consumers on our cases to understand their behaviour and concerns through qualitative and quantitative research, so that our work can be more effectively targeted, and ensure that the evidence on which we base our decisions is available on our website and in our reports.</p>	<p>We have opened new offices in Northern Ireland and Wales to bolster the Office of Fair Trading's (OFT's) existing Edinburgh office; these are now well-established and our representative teams have been developing productive relationships with a broad range of stakeholders. We have embedded the principle that staff ought to include 'all nations thinking' when planning work, as well as to raise awareness of the CMA, the law, and competition thinking among businesses and stakeholders in these nations.</p> <p>We have built strong relationships with consumer protection partners through the Consumer Protection Partnership and more broadly across the consumer landscape, and have agreed a set of protocols and clear ways of working which helps the regime to operate effectively for the benefit of consumers.</p> <p>We have entered into Memoranda of Understanding (MoUs) with the Office of Rail Regulation, Ofcom, the Financial Conduct Authority and the Civil Aviation Authority to clarify and enhance our roles in relation to the exercise of concurrent powers under consumer protection legislation. We anticipate concluding MoUs with Ofgem, Ofwat and the Advertising Standards Agency by Autumn 2015.</p> <p>We have been exploring how we might use digital technology more effectively to engage directly with consumers on our work. This includes using social media monitoring software, which allows us to gather and analyse intelligence from the internet, and increasing our use of digital channels to communicate and learn more about consumer, competition, and market issues from what people are saying online.</p>

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Prioritisation	In those areas of responsibility where we have discretion to choose whether or not to act, make appropriate decisions about which projects and programmes of work we undertake, so that our work is appropriately targeted.	<p>We use our published Prioritisation Principles⁴ to inform our decisions as to what discretionary work we take forward. Our Prioritisation Principles describe the factors we consider and balance when we make decisions on potential cases. These principles are: impact, strategic significance, risks and resources.</p> <p>We consulted on – and subsequently published – our Annual Plan for 2015-16,⁵ which set out our strategic priorities for the year. This was informed by our Strategic Assessment⁶ of risks to consumers and the efficient functioning of markets (published in 2014), and the government’s Strategic Steer.⁷</p>
Evaluation	Report annually on the evaluation of the impact of at least two cases, including at least one market study or market investigation.	<p>In 2014-15 we conducted two in-depth evaluations of:</p> <ul style="list-style-type: none"> • the OFT’s 2006 market study into the commercial use of public information;⁸ and • the OFT’s 2011 decision on ‘abuse of a dominant position by Reckitt Benckiser Healthcare (UK) Limited and Reckitt Benckiser Group plc’.⁹ <p>We published the outcomes of all our evaluations on our website.</p>

⁴ *Prioritisation principles for the CMA (CMA16)*, April 2014.

⁵ *Competition and Markets Authority Annual Plan 2015/16*.

⁶ *CMA Strategic Assessment (CMA35)*, November 2014.

⁷ Department for Business, Innovation and Skills (October 2013), *Competition regime: Response to consultation on statement of strategic priorities for the CMA*.

⁸ The independent evaluation of the OFT’s 2006 market study into the commercial use of public information is available on the CMA’s [website](#).

⁹ The evaluation of the Reckitt Benckiser decision was carried out by the CMA and has been reviewed by an external academic. The report of this evaluation is due to be published in autumn 2015.

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Impact estimation and monitoring	<p>Deliver at least 10:1 benefit to cost ratio (measured across all our work, over a rolling three-year period) and provide estimates of the likely impact of prospective interventions, including burdens on business, so as to inform prioritisation decisions and ensure interventions are proportionate risk-based and well targeted.</p>	<p>The CMA's performance management framework commits us to achieving direct financial benefit to consumers of at least ten times our cost to the taxpayer, measured over a rolling three-year period. For the period 2012 to 2015 the estimated average direct financial benefit to consumers was £745 million a year and the ratio was £11.20 for every pound of relevant cost to the taxpayer. For this period, markets work generated £577 million of the direct financial benefit, with a further £65 million from competition enforcement, £79 million from consumer enforcement and £24 million from merger control.</p> <p>During initial prioritisation of projects the CMA reviews and assesses the likely impact of an intervention.</p>
Market-wide targeted analysis of consumer problems	<p>Use our intelligence-gathering capabilities to ensure that work forming part of our consumer portfolio is well targeted in that projects (including enforcement action) are undertaken where:</p> <ul style="list-style-type: none"> • they will best complement our competition powers; • there is maximum scope for beneficial impact; • the CMA is best-placed to act; 	<p>We have established a dedicated intelligence team to develop our ability to identify markets where there appear to be systemic problems or where consumers are unable to exercise effective choice (for example because of information asymmetries). We have also sought to share information on emerging issues and market-wide problems with our UK and international partners to ensure that we can collectively tackle areas where there is most evidence of consumer harm.</p> <p>We have launched a number of projects where there appeared to be scope for significant consumer detriment in particular markets, including:</p> <ul style="list-style-type: none"> • Online reviews and endorsements – while recognising the potential benefits of these tools, we became aware of concerns about the potential for reviews and endorsements to mislead consumers and distort their decisions. We were concerned that, if true, this could lead to detriment for both consumers and businesses. We therefore launched a call for information on online

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Market-wide targeted analysis of consumer problems	<ul style="list-style-type: none"> there is evidence of a market-wide issue and/or where enforcement action would set a useful precedent. 	<p>reviews and endorsements in February 2015, to understand these important sectors better. We published our findings in June 2015.¹⁰</p> <ul style="list-style-type: none"> Higher education – we launched a project to assess the extent to which the practices identified in the OFT’s call for information might affect students, to clarify the responsibilities of universities under consumer protection law, and to identify the best way to address these issues. We published advice to higher education providers on their consumer law obligations and guidance to students on their rights under consumer protection law in March 2015.¹¹ Commercial use of consumer data – this has become an increasingly important economic activity, and is expected to continue to grow in size and scope in the coming years. We wanted to understand what benefits are created – for consumers, firms and the economy – from this activity. We also wanted to explore the concerns that have been raised about whether this activity is working well for consumers and for businesses and how competition and regulation are impacting on its development. We published the findings of our call for information in June 2015.¹²
Use of intelligence	Implement a dedicated Research, Intelligence and Advocacy team to gather and analyse intelligence from a wide range of sources, and advise on those cases which offer the best	We established a Research, Intelligence and Advocacy team who systematically monitor, analyse and report across a wide range of sources of intelligence.

¹⁰ [Online reviews and endorsements: Report on the CMA’s call for information](#), 19 June 2015.

¹¹ [Higher education: consumer protection review case page](#).

¹² [Commercial use of consumer data case page](#).

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Use of intelligence	<p>prospect to make a real difference for consumers.</p> <p>Use our intelligence-gathering capabilities to ensure that our consumer portfolio includes complex and/or precedent-setting consumer protection cases that we are best equipped to take, that best complement our competition powers and that will maximise our beneficial impact.</p>	<p>We worked with the Consumer Protection Partnership to identify its priority areas, based on assessment of information and evidence of indicative consumer detriment.</p> <p>Through consultation and an objective assessment of intelligence within and outside of the CMA, the CMA's Strategic Steer informed our strategic priorities, as set out in our 2014-15 Annual Plan. The Strategic Assessment identified current and potential risks to consumers, the efficient functioning of markets, and thus helped the CMA's leadership team take decisions on what work to prioritise.</p>
Compliance partnerships	<p>Maximise compliance with the Consumer Protection from Unfair Trading Regulations 2008 and the Business Protection from Misleading Marketing Regulations 2008 through means other than formal enforcement action, by establishing the benefits and risks of consumer law on the UK corporate agenda and ensuring the implications of individual enforcement cases are communicated and widely understood by businesses.</p>	<p>We engaged a range of compliance partners, such as trade associations who represent businesses and organisations that represent professionals who influence businesses, to raise awareness of these products and to present compliance messages in a way that will work for their members. For instance on our higher education compliance project we worked with the National Union of Students, the Student Loans Company and University Central Admissions Service, providing copy for their websites, newsletters and blogs.</p> <p>We developed accessible materials in plain English, including 60-second summaries (for example, Secondary ticket websites: advice for consumers),¹³ open letters (such as the letter from the CMA to higher education providers)¹⁴ and simple case studies which help to ensure the messages of individual</p>

¹³ [Secondary ticket websites: advice for consumers.](#)

¹⁴ [Letter from the CMA to secondary ticket websites on consumer law.](#)

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		<p>enforcement cases are communicated and widely understood by businesses and consumers.</p>
<p>Competition work – non regulatory contributions to simplification</p>	<p>Perform our functions in a way that is appropriate, clear, proportionate and consistent. Therefore, in line with our statement of policy and approach to transparency and disclosure, we aim to provide clear, accessible information on how we carry out our work to assist stakeholders in their engagement with us.</p>	<p>The CMA published guidance documents setting out our policy and procedure in relation to our competition work. This includes guidance on CA98 investigation procedures, cartel offence prosecution and a number of other guidance tools.¹⁵ We publish a range of other relevant information regarding our work, including the outcomes of phase 1 mergers, and in relation to phase 2 market and merger cases, we publish issues statements, provisional findings and notices of possible remedies.</p> <p>As part of a suite of guidance tools for businesses, we publish 60-second summaries which provide easy to understand compliance messages to relevant audiences, which helps to clarify and simplify regulatory compliance for businesses and individuals. To further minimise the burden of regulation on small businesses, we have committed to developing a suite of compliance tools tailored to their needs.</p> <p>During initial prioritisation of projects the CMA reviews and assesses the likely impact of a project including the interventions that might flow from it. Where we have found a need to intervene in a market, we ensure that our market and merger remedies are designed and implemented according to principles of proportionality. This includes considering the effectiveness of remedies, evaluating whether less intrusive measures would be similarly effective and assessing whether the positive impact and benefits of possible remedies are proportionate to the relevant costs and burdens of compliance for businesses</p>

¹⁵ [Competition Act 98 and cartels guidance](#); [Competition and consumer law compliance: guidance for businesses](#).

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Competition work – non regulatory contributions to simplification		and consumers. As part of our commitment to minimise the ongoing burdens of our interventions we are implementing an integrated approach to the review of merger and market remedies and have enhanced the capabilities of our Remedies Monitoring Team responsible for all aspects of monitoring and enforcement of market and merger remedies. Since the CMA was created we have initiated reviews of around 80 existing remedies, with a view to identifying those remedies which are no longer necessary or which pose unnecessary burdens.