

CMA Annual Plan 2018/19 consultation

Summary of responses

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1. Overall

- 1.1 We received 16 responses to our consultation, from individuals and organisations that between them represent significant numbers of citizens, consumers and businesses across the United Kingdom.
- 1.2 The formal feedback received during consultation, alongside informal feedback received from a range of other stakeholders during and since consultation, has shown support for the priorities and commitments set out in the Competition and Markets Authority's (CMA) 2018/19 draft Annual Plan (the Plan).
- 1.3 There was particular support for the focus on vulnerable consumers, on addressing harmful online practices and issues in the digital economy, on helping to ensure that markets can be trusted, and on the CMA's expansion of its office in Edinburgh.

2. Enforcement

- 2.1 Respondents welcomed the CMA's intention to carry out new digital campaigns to help businesses understand and comply with competition and consumer law, including one focused on unfair terms and conditions.
- 2.2 One respondent emphasised support for the CMA's intention to work with the government to bring in civil fining powers to act as a deterrent to unfair trading practices.

The CMA's view

- 2.3 We welcome support for our continued focus on helping the majority of businesses who want to comply with the law, alongside robust enforcement against those who break it. Enforcement is central to our purpose as an organisation in promoting competition for the benefit of consumers and we will continue to use our full range of powers to protect consumers from illegal anti-competitive behaviour and harmful, unfair trading practices. We hope that relevant respondents to the consultation, and other partners, can continue to promote our materials to their audiences to help them understand the law and avoid engaging in illegal practices in the first place.
- 2.4 We welcome support for the introduction of civil fining powers to act as a strong deterrent against unfair trading practices and breaches of competition law; a recommendation which the National Audit Office made in its 2016 review of the consumer protection landscape in England and Wales, and which we strongly support. The government has confirmed that it 'agrees with

this recommendation and will seek to introduce these powers when opportunity allows'.¹

3. Markets and mergers

- 3.1 One respondent urged the CMA to ensure that the remedies and reforms from our previous market projects, including into legal services, energy and retail banking, are successfully implemented, to improve the functioning of these sectors and deliver the intended benefits for consumers. Another respondent sought further information on how the CMA will follow up on its previous work, specifically in relation to the legal services market study.
- 3.2 Welcoming the proposed focus on online and digital markets, one respondent urged the CMA to undertake a balanced review of the role of digital platforms in specific markets. This would include looking at key sectors such as tourism and accommodation, retail and food and how smaller businesses are treated by the dominant platforms in these markets. A further respondent sought a review of how current legislation may allow online retailers to gain unfair advantage over traditional retailers.
- 3.3 One respondent emphasised that the CMA's work on digital markets and markets in general should include those who lack internet access or skills, and who are on the fringes of online markets, as well as internet savvy consumers.
- 3.4 Two respondents from Scotland urged the CMA to give serious consideration to carrying out an up-to-date study of the Scottish legal services market.
- 3.5 One respondent suggested that the market for funeral plans could be a focus for the CMA.
- 3.6 Whilst supporting the wider focus on vulnerable consumers, two respondents highlighted that the smallest businesses, i.e. microbusinesses, can be as vulnerable as consumers when it comes to acting as buyers in markets and are vulnerable where there is consolidation in wholesale markets. One of these respondents argued that the CMA's remit should be widened to include microbusinesses so that recent reviews and investigations into how the energy, legal services and banking sectors are working for smaller businesses can become a more routine part of the CMA's activities.

¹ <https://assets.publishing.service.gov.uk/media/5a3bbeace5274a7356de0f5e/beis-response-to-cma-on-dcts.pdf>

- 3.7 One respondent raised concern over the sustainability of supply chains in an environmental context and the extent to which businesses consider such sustainability in their practices. This respondent called on the CMA to examine these issues alongside European competition agencies and to consider further how it can protect the future consumer and thus the operation of markets. The respondent also suggested that the CMA include broader UK policy goals and long-term sustainability when considering how well markets are functioning, and report on how the CMA is contributing to the delivery of broader UK policy goals on long-term food security and sustainability, decent work and sustainable production and consumption.
- 3.8 One respondent welcomed the CMA's continued efforts to reduce burdens on businesses through its merger control, including fast-tracking appropriate mergers to phase 2.

The CMA's view

- 3.9 As stated in our draft Plan, during 2018/19, as well as starting work in new areas, we will see through projects we have already embarked on. We are in markets to secure lasting change and will in general be inclined to see things through, before moving on. We are therefore highly committed to following through on the recommendations and remedies arising from our market studies and market investigations. This includes those we have completed in the past year, namely our market studies into legal services in England and Wales,² digital comparison tools,³ and care homes for the elderly.⁴ We will also not lose sight of the remedies and recommendations from our market investigations into energy⁵ and retail banking⁶ – markets of enormous importance to millions of households and businesses across the UK. Through our evaluations programme and remedies reviews, we will also come back to markets in which we have intervened in the past to ensure that our work was effective, and if needs be we will revisit them.
- 3.10 We agree with the respondent's views that our work in the digital economy should include a focus on those are unable to access or navigate these markets as much as those who are. This is a balance we have sought to strike in several recent projects, including the remedies arising from our energy and retail banking market investigations. As part of our planned focus

² www.gov.uk/cma-cases/legal-services-market-study

³ www.gov.uk/cma-cases/digital-comparison-tools-market-study

⁴ www.gov.uk/cma-cases/care-homes-market-study

⁵ www.gov.uk/cma-cases/energy-market-investigation

⁶ www.gov.uk/cma-cases/review-of-banking-for-small-and-medium-sized-businesses-smes-in-the-uk

on addressing the needs of, and harm suffered by, vulnerable consumers, we will continue to take into account people who lack the access to online markets or the skills to secure the best deals online.

- 3.11 We take note of the suggestions that we should review the role of digital platforms in specific markets and the extent to which current legislation allows online retailers to gain unfair advantages over traditional retailers. We are happy to work with the respondents to understand more about these issues. We are already carrying out two investigations⁷ which focus on online platforms and as with all our decisions on potential casework, the suggestions by respondents would be subject to assessment against our Prioritisation Principles,⁸ balancing the impact we expect to achieve and its strategic importance alongside the likely risk and the draw on our resources.
- 3.12 We also note the suggestion that a review be carried out of the legal services market in Scotland. As we made clear at its launch, we decided to focus our market study on the market in England and Wales on the basis that Scotland and Northern Ireland have different legal systems and that regulatory reform was at a different stage in these jurisdictions. However, we also stated that we would use the outcome of this market study to inform any future consideration of similar issues in Scotland and Northern Ireland, and we engaged with stakeholders in the devolved nations during the study. Shortly after we announced the findings of our study, the Scottish Government announced an independent review of legal services in Scotland. We have engaged with the Scottish Government and with its Independent Review Group during the course of its review, to share our findings from England and Wales and remain willing to take part in discussions on the merits of further research in Scotland.
- 3.13 We welcome the suggestion to carry out work in the market for funeral services. We have heard concerns about this market for some time, including from the Work and Pensions Select Committee in its March 2016 report. We are currently developing our understanding of the concerns that have been raised and are determining whether we should carry out work in the sector.
- 3.14 We will continue to listen to and take account of the concerns of businesses across all our work, though ultimately through the lens of the end consumer, consistent with our statutory duty. Overall, we believe that we already have the ability, through the legislation under which we operate as well as our

⁷ www.gov.uk/cma-cases/hotel-online-booking, www.gov.uk/cma-cases/price-comparison-website-use-of-most-favoured-nation-clauses

⁸ www.gov.uk/government/publications/cma-prioritisation-principles

Prioritisation Principles, to take a continuing strong interest in how smaller businesses engage in markets. The evidence of our work on, for example, legal services, energy and banking, as well as a number of recent enforcement cases, is that we are willing and able to examine and remedy markets that do not work well for small and medium-sized enterprises (SMEs)⁹ or new entrants. Any amendment to the CMA's remit to include direct harm to SMEs or microbusinesses would ultimately be a matter for the UK Government and Parliament.

- 3.15 The CMA recognises the concerns raised over supply chains and supports the government's actions to address poor practices which could harm their sustainability and the environment. With regard to expanding the factors we take into account in our assessment how markets are functioning, our clear statutory duty, supported by the legal framework under which we operate, is to promote competition for the benefit of consumers. Consumer welfare is therefore paramount to the cases we choose to pursue and the interventions we make. Our work may help to address wider UK policy goals, such as the long-term sustainability of key markets. This was the case in our market study into care homes for the elderly, in which we concluded that the current system is not sustainable without additional funding.¹⁰ However, the legal framework set for us by government does not allow such factors to drive our decision-making and there are other parts of government and other policy instruments more specifically set up for tackling issues of global poverty and environmental sustainability. We, like other government departments, report on our achievement of environmental sustainability targets in our Annual Report and Accounts.¹¹
- 3.16 We welcome support for our efforts to streamline our end-to-end merger control, including by reducing burdens on merging businesses and cost to the UK taxpayer. We will continue to fast-track appropriate mergers to phase 2, review our policies and guidance and sharpen our approaches.

4. Partnership and advocacy

- 4.1 The CMA's commitment to maintaining strong, mutually beneficial and cooperative relationships with other agencies was welcomed, as was the commitment to promoting best practice among concurrent regulators.

⁹ Usually defined as any business with fewer than 250 employees

<http://researchbriefings.files.parliament.uk/documents/SN06078/SN06078.pdf>

¹⁰ www.gov.uk/government/news/urgent-action-needed-across-the-uk-care-home-market

¹¹ www.gov.uk/government/publications/cma-annual-report-and-accounts-2016-to-2017

- 4.2 One respondent welcomed the CMA's commitment to working with businesses of all sizes.
- 4.3 Another expressed concern over the lack of information on co-ordinated activities with sector regulators, particularly in the context of the UK's exit from the EU.
- 4.4 Several respondents welcome the planned expansion of the CMA's Scotland office, noting how this will allow increased engagement between the Scottish Government and the CMA on potential competition issues and provide an opportunity to increase awareness of the importance of competition among Scottish businesses.

The CMA's view

- 4.5 We welcome the comments received on our continued commitment to maintaining strong relationships with other agencies, including sector regulators, and to working with businesses of all sizes.
- 4.6 We recognise the opportunities to work with sector regulators on our shared priorities, including a focus on vulnerable consumers, on online and digital markets, and on preparing for the UK's exit from the EU. As we state in our draft Plan, we will build further on the progress we and the regulators have made, helping to ensure that competition law is applied effectively and consistently in markets for essential services. We will continue to fulfil our leadership role in the concurrency regime and to work with sector regulators to enhance each other's expertise. There are well-established bilateral and multilateral channels for the CMA and sector regulators to explore and work towards shared priorities, including the UK Competition Network, which the CMA chairs, and the UK Regulatory Network, of which the CMA is a member. We have added some additional text into the final Plan to emphasise the importance of collaboration with sector regulators in the context of Exit.
- 4.7 We welcome the feedback on the expansion of our Scottish office. As well as strengthening our presence in Scotland, this will allow us to build stronger and wider relationships with the Scottish Government and Parliament, business and consumer groups, and will increase our capability to carry out UK-wide projects from Scotland. Addressing a comment from one respondent, it will be important that staff in London leading on UK-wide projects will routinely ensure consultation with staff in Edinburgh to gain any additional information on the Scottish perspective or impact on the issue at hand.

5. Developing the CMA

- 5.1 Several respondents welcomed the creation of a new digital, data and tech team, as part of support for the CMA's focus on online and digital markets.

The CMA's view

- 5.2 We welcome support for the creation of the digital, data and tech team to further enhance our digital capacity and capabilities.

6. Preparing for the UK's exit from the EU

- 6.1 One respondent sought further information on the anticipated level of funding required by the CMA to carry out the expected responsibilities following the UK's exit from the EU (Exit). The same respondent expressed some concern at the lack of any impact assessment on the future operating model, on current activities and on the criteria for deciding upon priorities.
- 6.2 One respondent emphasised the important role the CMA has in assisting the UK government in planning for Exit, stating that it believes the CMA is uniquely well-placed to advise government in relation to proposals for revision of laws or regulatory frameworks where they may affect competition.

The CMA's view

- 6.3 We have carefully examined the implications of different Exit scenarios on the competition (including merger control) and consumer protection regimes, and on the CMA. These have informed the preparations we have already carried out, those currently underway and those which we will make in the coming years. They have also informed ongoing discussions with HM Treasury about the funding implications of those different Exit scenarios.
- 6.4 The government recognises the need for us to begin to increase our capacity in readiness for Exit, and in the final Annual Plan, we have confirmed that the government has allocated the CMA up to an additional £23.6 million in 2018/19 to allow us to continue our preparations for the Exit. As we state in para 7.6 of the final Plan, we continue to review and refine the resource required to carry out our additional responsibilities post-Exit. This review process is necessarily ongoing, as material developments in EU-UK negotiations arise.
- 6.5 We welcome support for our work advising government as it prepares for Exit. Consistent with our wider function of assisting government with the

development of law and policy options affecting markets, we have advised and will continue to advise on the implications of Exit for the competition (including merger control) and consumer protection regimes. We will also advise government in relation to wider proposals for revisions of laws or regulatory frameworks following the UK's exit from the EU where they may affect competition.

7. Resources

7.1 There were no comments received on this section.

Appendix A: List of formal respondents

British Independent Retail Association

BT Group plc

Citizens Advice Scotland

Chair of the Independent Review of the Regulation of Legal Services

Directorate-General for Competition, European Commission

Fairtrade Foundation

Federation of Small Businesses

Forum of Private Business

Law Society of Scotland

Money and Mental Health Policy Institute

Mr Jeremy Cama

Scottish Legal Complaints Commission

Solicitors Regulation Authority

The Scottish Government (Cabinet Secretary for Economy, Jobs and Fair Work)

The Welsh Government (Strategy Group)

Which?