

Sunset clauses in market investigations policy
Competition and Markets Authority
Department for Business, Energy and Industrial Strategy
RPC rating: validated

Description of the measure

In September 2015, the Competition and Markets Authority (CMA) amended its document '*Market studies and investigations - guidance on the CMA's approach*' to reflect a new policy on the use of sunset clauses in Market Investigation Orders. A Market Investigation Order typically imposes several obligations on firms in the given market (known as 'remedies'). Sometimes it is appropriate for remedies to have sunset clauses to ensure that they do not remain in force when they are no longer necessary to achieve the purposes for which they were imposed. This might be because a competition problem is inherently of limited duration, or because it is likely to be solved by market developments. The new policy was designed to encourage appropriate use of sunset clauses by CMA market investigation teams.

Impacts of the measure

Between the publication of the new guidance and March 2017, the CMA used two sunset clauses with Market Investigation Order remedies. These clauses applied to the price cap for customers on pre-payment meters, following the energy market investigation, and standardised terms for new bank accounts opened by small and medium-sized businesses, following the retail banking market investigation. CMA spoke to the relevant teams to assess the impact that the new policy had on the decision to use a sunset clause. From this, the CMA estimated that the policy is likely to lead to an average of 0.22 additional sunset clauses per year.

The CMA's recent programme of remedy reviews has produced good evidence on the benefits to business from lifting remedies that are no longer necessary. Using this, the CMA estimates that the gross annual benefit of each additional sunset clause would be around £1.13m, with the benefits profile starting four years after the sunset clause is written. Combining these estimates, the CMA estimated an equivalent annual net direct cost to business (EANDCB) of -£0.5m for the policy.

Quality of submission

The RPC referred this case to the Better Regulation Executive (BRE) to check whether the measure was a regulatory provision and, if so, whether it should be accounted for under the business impact target (BIT). The RPC's main concern was that it did not seem appropriate for the reduction in burden on business, resulting from an increased use of sunset clauses, to score since the original impact of the measures (to which the sunset clauses apply) would not have been accounted for. This was because, in accordance with better regulation framework rules, the original measures would have been classified as pro-competition and, therefore, non-qualifying. Indeed, the two market investigations (energy market and retail banking) and associated remedies used in the CMA assessment have already been listed as non-qualifying under 'pro-competition' in the CMA's non-qualifying regulatory provision (NQRP) summary statement. There was no suggestion that the burden of the remedies would cease to be pro-competitive at any point.

In addition, the Better Regulation Framework Manual (July 2016) states that, where a regulatory measure is subject to a sunset provision, the time period for the appraisal should be the expected life of the policy, not the sunset period (para 2.3.34). Given this, the introduction of a sunset clause would not, in itself, make a difference to the assessment of the impacts of a measure.

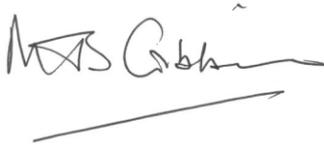
After consulting the Department's lawyers, BRE confirmed that the present measure is a qualifying regulatory provision (QRP). To address the concerns outlined in the preceding paragraph, the CMA has revised its submission to a zero EANDCB QRP. The RPC can validate this figure for BIT purposes.

Regulator assessment

Classification	Qualifying regulatory provision
Equivalent annual net direct cost to business (EANDCB)	-£0.5 million (initial estimate) £0.0 million (final estimate)
Business net present value	-£2.5 million (initial estimate) £0.0 million (final estimate)

RPC assessment¹

Classification	Qualifying regulatory provision
EANDCB – RPC validated	£0.0 million
Business impact target score	£0.0 million



Michael Gibbons CBE, Chairman

¹ For reporting purposes, the RPC validates EANDCB and BIT score figures to the nearest £100,000.