

CMA impact assessment 2017/18

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Contents

	<i>Page</i>
1. Summary	4
2. Overview of our methodology	7
3. Consumer savings by area	11
Competition enforcement.....	11
Consumer protection enforcement.....	11
Merger control.....	12
Market studies and market investigations	14
4. Costs.....	17

1. Summary

- 1.1 The Competition and Markets Authority (CMA) is the UK's lead competition and consumer authority and its primary duty is to promote competition, both within and outside the UK, for the benefit of consumers. The CMA has a wide range of tools to use in addressing competition and consumer problems including carrying out investigations into mergers and markets, enforcing competition and consumer law and working with sector regulators. The CMA also has a function to consider regulatory references and appeals.
- 1.2 As part of its performance framework agreement with the Department for Business, Energy & Industrial Strategy (BEIS)¹ the CMA is required to report annually on:
- (a) the delivery of a target of direct financial benefits to consumers of at least ten times its relevant costs to the taxpayer (measured over a rolling three-year period); and
 - (b) the ratio of direct financial benefits to consumers and costs for its principal tools.
- 1.3 In this fourth CMA Impact Assessment we report on performance against this target for the financial year 2017/18. As the target is measured as a three-year rolling average, for 2017/18 the calculation is based on the performance of the previous three financial years of the CMA.
- 1.4 For the period 2015 to 2018 the estimated direct financial benefit to consumers was £3.3 billion in aggregate, representing annual average consumer savings of £1.1 billion. The ratio of direct benefits to cost was 17.0 to 1. The largest project contributing to this year's estimates was the care homes market study, where we made recommendations to government which we expect to have an enduring effect on the care home industry.
- 1.5 The rolling three-year average is still heavily driven by the three markets cases that concluded in the 2016/17 financial year. Around half of the estimated total savings over the period are from the market investigations into energy² and retail banking³, and the market study into the supply of legal services⁴.

¹ BIS (January 2014), [Competition and Markets Authority: performance management framework](#).

² CMA case: [Energy market investigation](#).

³ CMA case: [Retail banking market investigation](#).

⁴ CMA case: [Legal services market study](#).

Table 1: Estimated average annual CMA consumer savings and costs for 2015-18

	<i>£m</i>
<i>Area of CMA work</i>	<i>Savings</i>
Competition enforcement	105 ⁵
Consumer protection enforcement	61
Merger control*	163
Market studies and market investigations	772
<hr/>	
Total benefits	1,101
Costs	65†
Benefit/costs	17.0:1

*The CMA has a duty to investigate mergers that legally qualify for scrutiny. This means that CMA merger control work is demand-led and not discretionary, unlike most other areas of the CMA's work. Given that the number of qualifying mergers can vary considerably from year-to-year (because of fluctuations in the economic cycle for example), the number of investigated mergers and the direct consumer benefits of the CMA's merger control work can also vary significantly from year-to-year.

†This is total CMA costs (actual spend) minus costs of the CMA work on regulatory appeals.

1.6 The assessment is undertaken by the CMA itself and is reviewed by an external expert. This year the expert was Dr Christopher Decker of the University of Oxford⁶. The methodology used by the CMA is based on that developed and used by the OFT and CC⁷, validated by successive independent academic reviewers and consistent with approaches now regarded by the OECD as international good practice.⁸

1.7 Impact estimations are conducted immediately after cases are completed and are therefore based only on information available during the case and on assumptions regarding the expected impact of our interventions. On this basis most of the estimates are considered to be 'ex ante' evaluations.⁹ For example, for market studies and investigations the impact estimates capture the expected future benefits of remedies, rather than an ex post assessment of their effectiveness in practice. In general, the assumptions we apply are cautious and hence we consider our estimates to be conservative. In order to gain further understanding of the impact of our work, we also conduct ex-post

⁵ This rolling average excludes all benefit previously attributed to the Phenytoin case, following the Competition Appeal Tribunal's decision not to uphold the CMA's finding of an abuse of a dominant position by charging excessive and unfair prices.

⁶ Dr Decker is a Research Fellow in Law and Economics in the University of Oxford and a Director of Regulatory Economics Limited, a private consultancy firm which undertakes advisory work mainly for governments and other public bodies.

⁷ OFT (July 2010), [Guide to the OFT's impact estimation methods](#).

⁸ OECD (April 2014), [Guide for assessing the impact of competition authorities' activities](#).

⁹ In rare circumstances we have used ex-post information to improve our impact assessments for some cases.

evaluations for a small subset of cases that help us to critically assess the effects of past interventions, drawing lessons and implications to inform future decision making at the CMA.

- 1.8 Our estimates exclude the impact of a number of cases where the CMA's intervention is likely to generate considerable consumer benefits but these benefits were difficult to quantify in a sufficiently robust manner.
- 1.9 The estimate of benefits excludes the CMA's compliance work,¹⁰ international activities¹¹ and regulatory appeals as our role is an appellate one rather than being the primary regulator.¹² The benefits from our advocacy to government are also excluded.
- 1.10 In addition, the focus on direct financial benefits means that we exclude many important wider impacts of the competition regime. For example, we do not take into account the deterrence effect of our work, such as the deterrence of anti-competitive mergers or anti-competitive conduct. Evidence from existing academic studies¹³, previous OFT research¹⁴ and ex-post evaluations conducted this year¹⁵, indicate that such deterrence can be significant albeit very difficult to measure precisely.
- 1.11 Studies also show that increases in competition in a market are often associated with increases in productivity, and that competition policy interventions can therefore improve productivity.¹⁶ This impact on productivity is not captured in our impact assessment. In sum, evidence suggests that the direct impact of interventions is only a part of the overall impact of competition authorities' work.

¹⁰ See for example the CMA's activity to assess compliance with the law across the higher education sector following publication of advice for providers on their consumer law obligations to undergraduate students.

¹¹ Our impact estimates for example do not account for benefits from our work on UK engagement with international networks and organisations.

¹² Our duty in this area is to act according to the relevant legal framework rather than necessarily acting in the immediate interest of consumers.

¹³ As collated in the CMA's 2017 literature review, [The deterrence effect of competition authorities' work – literature review](#).

¹⁴ See *The impact of competition interventions on compliance and deterrence*, OFT1391 and *The deterrent effect of competition enforcement*, OFT 962.

¹⁵ DotEcon (2018), a review conducted on the [Evaluation of direct impact and deterrent effect of CA98 cases](#).

¹⁶ CMA (2015), [Productivity and competition: a summary of the evidence](#).

2. Overview of our methodology

- 2.1 The impact estimations included within this report focus on the direct financial benefits to consumers of the CMA's work completed over the previous three financial years. We present the benefits as three-year rolling averages to avoid year to year fluctuations in the impact estimates due to uneven caseloads across years and to reflect the fact that some of our cases take more than one year to complete. The direct financial benefits to consumers may include, for example, the direct reduction in prices to consumers or the value to consumers of improvements in quality, service or information provision following an intervention.
- 2.2 We present estimates of the impact of our work for each of the following areas:
- (a) competition law enforcement
 - (b) consumer protection enforcement
 - (c) merger control
 - (d) market studies and market investigation references (collectively referred to as 'markets work' in this document)
- 2.3 For merger control and markets work, the CMA is both the phase 1 and phase 2 authority in a two-stage process (phase 1 cases being referred where there are sufficient competition concerns to require further, more in depth, phase 2 investigation). Although the decision makers at phase 2 comprise a group of independent members drawn from the CMA panel (to ensure a transparent and distinct process) the CMA has responsibility for both phases including their resourcing. Where cases have been referred to phase 2, benefit estimates are only made once the phase 2 process has been completed, although both phase 1 and phase 2 costs are part of the impact assessment.
- 2.4 For confidentiality reasons we do not publish impact estimations for individual cases and projects. However, our estimates have been independently reviewed by Dr Christopher Decker to ensure that our benefit estimates are reasonable and robust.¹⁷

¹⁷ Consistent with the purposes of the review exercise, we asked Dr Decker to confirm the accuracy of the calculations of impacts. He also commented on the consistency of the estimates with our published guidance, and consistency of approach taken between different cases. He was not asked to comment on the underlying assumptions where these were based on analysis carried out as part of individual cases (for example, the estimates of consumer detriment resulting from identified competition problems).

- 2.5 The methodology used when preparing the estimates for the CMA's impact assessment reports, including this one, is largely based on that developed and used by the OFT and CC¹⁸. However, unlike the OFT positive impact report, the CMA impact assessment estimates include benefits from cases where the outcome is under appeal at the time of publication of the report. We include these benefits as we consider this ensures the impact assessment is the best estimate of the likely impact of the CMA cases at the time of the publication of the report. In addition, this approach also ensures that the benefit estimates are included in the impact assessment at roughly the same time as the costs the CMA incurred in carrying out the case.¹⁹ This approach requires that subsequent impact assessments may need to be revised to take into account the outcome of any appeals. No adjustment of this nature had to be made in this year's impact assessment with respect to past years.
- 2.6 In order to calculate the impact of any case or project, the CMA usually estimates the following components based on information and evidence available from the original investigation:
- (a) the size of the affected turnover;
 - (b) the price, quality or other negative effect removed or avoided due to the CMA's intervention (i.e. usually increased price, but may be in the form of decreased quality, decreased choice, etc.); and
 - (c) the length of time the detriment (e.g. higher prices) would have prevailed absent the intervention.
- 2.7 First, we estimate the annual impact on consumers by multiplying the turnover of the affected goods and services by the assumed price increase that was removed or avoided due to our action. Second, we estimate future consumer savings by multiplying the annual impact by the number of years we believe the detriment to consumers would have prevailed. We discount future accruals of benefits (see paragraph 2.12).
- 2.8 Data on the size of the turnover affected by our intervention (referred to as 'affected turnover') is usually gathered by the case team as part of its evidence-gathering and can be recalled from the original investigation. To be conservative, the CMA typically applies a narrow definition of the affected turnover by estimating it as the turnover of the directly affected firms. That is, we assume that the price of the goods or services competing with those offered by the firm(s) subject to the investigation in the market are unaffected,

¹⁸ OFT (July 2010), [Guide to the OFT's impact estimation methods](#).

¹⁹ It can be several years before appeals are concluded leading to a significant lag between the inclusion of the benefits and costs of certain cases.

even though it is likely that, in some circumstances, they would also decrease to some extent as a result of our intervention. At other times, where the CMA tackles a sector more widely (e.g. through markets or consumer protection work), to estimate the affected turnover we need to make assumptions on the size of the market that is affected by our action.

- 2.9 In relation to the effect avoided or removed due to the CMA's intervention, where possible we base our estimations on information collected during the original investigation. This may be, under rare circumstances, information on the actual effect (for example, the price overcharge due to an unfair pricing practice), or more frequently, an estimation of the likely effect on consumers (for example, the magnitude of upward pricing pressure resulting from a merger) as assessed by the case teams during the original investigation. Where such information and data are unavailable, we apply rules of thumb that are conservative interpretations of estimated effects and consistent with recent academic research.
- 2.10 Similarly, when estimating the expected future duration of the detriment prevailing absent our intervention we draw on information collected at the time of the original investigation. As a starting point, we tend to take a default duration value that is based on, but not equal to, existing international practice and academic research and adjust this value where case-specific information suggests this would be appropriate.
- 2.11 Ex-ante estimates of impact are based on the best information available at the time of estimation – which is typically when the decision or recommendations have been made but the full impact is not yet observable. In contrast, ex-post evaluations are usually more robust and are based on information gathered after the recommendations or remedies have been implemented and the resulting impact realised, often several years after the case has been completed. The most recent ex-post evaluations published over the past year were:
- (a) An evaluation of the impact and deterrence effect resulting from five competition enforcement cases.²⁰ This review estimated the change in behaviour and competition awareness of firms in industries where the

²⁰ DotEcon (2018), [Evaluation of direct impact and deterrent effect of CA98 cases](#). Based on the results of a survey of businesses, DotEcon assessed awareness of five CA98 cases and of competition law more generally, and sought to quantify the indirect, deterrent effect on firms not subject to the original enforcement action. DotEcon found a clear link between CMA/OFT intervention and greater levels of awareness and understanding of competition law, specifically in relation to the illegality of specific infringing behaviour in the selected CA98 cases. Furthermore, there is evidence to support the view that awareness of cases pursued by the CMA/OFT changes in the perception of being caught and prosecuted, ultimately deterring infringing behaviour by other firms. DotEcon estimated that the indirect deterrence effect is plausibly a multiple of the direct effect. Although the effect per firm is small, there is a significant benefit due to the large number of businesses being deterred from engaging in anti-competitive behaviour.

CMA had previously taken enforcement action. The review found that awareness of competition law was higher in both the industry where the CMA took enforcement, and in adjacent industries, than the average across businesses in the UK. It also found that some businesses had modified (or intend to modify) an agreement or commercial initiative as a result of enforcement action in their industry.

- (b) The other evaluation was conducted as part of our Digital Comparison Tools market study, and looked at the impact of our 2014/15 prohibition of wide price parity clauses in contracts between the providers of private motor insurance and price comparison websites.²¹

In 2015, we ordered private motor insurance providers and price comparison websites not to use clauses where an insurance provider agrees not to offer an insurance product at a lower price on any other sales channel than on the price comparison website, or to engage in any equivalent behaviour. These 'wide price parity' clauses reduce the incentives for price comparison websites to compete on the level of commissions that they charge insurance providers, and they reduce the ability and incentive of price comparison websites to enter and expand by seeking to attract lower prices for insurance products from providers via lower commission fees. We estimate that wide price parity clauses (also known as wide most favoured nation clauses, or wide MFNs) increased commissions by around 3 to 4% on average during 2010 to 2016.

- 2.12 In line with central government techniques for discounting future accruals of benefits or costs, we discount future consumer savings by the HM Treasury endorsed Social Time Preference Rate (3.5%).²²
- 2.13 Under certain circumstances we also need to use the Consumer Price Index to bring the benefits to the price level of the current year. This is the case when, due to the CMA's investigation, consumers are able to seek redress for any past harm suffered.

²¹ Appendix 2 of the DCTs Market Study's [Paper E: Competitive landscape and effectiveness of competition](#).

²² See HM Treasury, [The Green Book: Appraisal and Evaluation in Central Government](#).

3. Consumer savings by area

Competition enforcement

- 3.1 The CMA engages in a range of activities aimed at ensuring compliance with the Competition Act 1998 (CA98), including formally investigating and taking enforcement action against anti-competitive practices and using ‘softer’ tools such as providing guidance and targeted compliance initiatives.²³ Under the Enterprise Act 2002 (EA02) we can also investigate and prosecute individuals for certain breaches.
- 3.2 We estimate that the CMA’s interventions saved consumers at least £315.6 million in aggregate between the financial years 2015 and 2018, representing annual average consumer savings of £105 million. These figures are based on anticipated price reductions that are likely to follow the break-up of a cartel or the termination of other unlawful conduct.
- 3.3 Our total impact figure for competition cases includes a number of investigations concluded by the CMA in the 2017/18 financial year, such as: the cleanroom laundry services investigation,²⁴ the precast concrete drainage products criminal investigation,²⁵ and an investigation into anti-competitive practices in the light fittings sector.²⁶
- 3.4 The estimate does not include the significant deterrent effect of our competition enforcement actions. As discussed in paragraph 2.11(a) the overall magnitude of the CMA’s impact is therefore expected to be significantly higher than the estimated direct financial benefits.²⁷

Consumer protection enforcement

- 3.5 The CMA’s consumer protection enforcement work seeks to change trader behaviour that appears to contravene consumer protection legislation using a range of interventions such as publishing guidance, issuing informal warnings, accepting undertakings under the EA02, or obtaining court orders. All interventions are aimed at protecting consumers, particularly vulnerable consumers, from rogue trading, unfair commercial practices and other breaches of consumer protection legislation.

²³ The benefits from these softer tools are not typically included in the quantified estimate of benefits.

²⁴ CMA case: [Cleanroom laundry services and products: anti-competitive arrangement](#)

²⁵ CMA case: [Supply of precast concrete drainage products: criminal investigation](#).

²⁶ CMA case: [Light fittings sector: anti-competitive practices](#)

²⁷ CMA (September 2017), [The deterrence effect of competition authorities’ work – literature review](#).

- 3.6 The CMA often works together with other organisations, for example Trading Standards²⁸, who are also responsible for consumer protection enforcement and tackling unfair trading practices. We also cooperate with other national authorities within the Consumer Protection Cooperation Network to apply and enforce consumer rights legislation. In our impact assessment, we include consumer benefits resulting from these joint actions, where these have been led or significantly influenced by the CMA, by allocating a proportion of the benefits to the CMA.
- 3.7 For the period 2015 to 2018, the total consumer benefits in aggregate from relevant consumer enforcement work are estimated to be £184.1 million, giving an average of £61.4 million per year. These benefits may include a reduction in consumer detriment as a result of stopping unlawful practices, or the estimated price impact of the CMA's interventions, for example as a result of increased transparency and more informed consumer decisions.
- 3.8 The CMA's car hire Intermediaries investigation²⁹ accounts for the largest part of the 2017/18 impact figure. The investigation focused on the drip pricing of compulsory charges in online car hire quotes. Such drip pricing leads to poor transparency and reduces competition by making it harder for consumers to compare different offers. The CMA has prevented this action through legally binding agreements with several large car hire intermediaries.
- 3.9 Our estimates, as already noted, do not include the deterrence effect of the CMA's consumer protection activities, even though we tend to prioritise cases where we expect that changing the behaviour of one business would set an important precedent or have other market-wide implications.

Merger control

- 3.10 The CMA operates both stages of the UK two-stage merger regime. Businesses can (voluntarily) notify a merger to the CMA and, in addition, the CMA has a duty to keep merger activity under review and can investigate mergers that have not been notified to it. At phase 1 it reviews merger situations falling within its jurisdiction³⁰ and refers for more detailed scrutiny (at phase 2) any cases where there is a realistic prospect of a substantial lessening of competition (SLC) in a UK market. The CMA has the power to accept undertakings in lieu (of reference to phase 2) (UiLs) from the merging

²⁸ For an evaluation of the activities of Trading Standards, see OFT (June 2009), *An evaluation of the impact of the fair trading work of local authority Trading Standards Services in the UK, OFT1085*.

²⁹ CMA case: [Car hire intermediaries](#).

³⁰ Mergers of businesses with EU and global turnover above a certain size fall within the jurisdiction of the European Commission. Mergers affecting trade between member states may also be reviewed by the European Commission.

parties at phase 1, if these are deemed to address potential concerns identified in the course of its investigations.

- 3.11 At phase 2, a CMA panel of independent members conducts an in-depth investigation to assess if a merger is expected to result in an SLC. If an SLC is expected, the CMA decides on the remedies required and can impose remedies by order if it is not able to agree them with the businesses.
- 3.12 Our estimates of consumer savings in this area include merger proposals amended through UiLs, mergers that are abandoned, and mergers amended or prohibited by the CMA at phase 2.
- 3.13 The impact of Phase 1 mergers is scaled down by the SLC rate to reflect the fact that not all cases where the merger parties remedied the CMA's concern, either through UiLs or abandoning the merger, would have resulted in an SLC at phase 2. The SLC rate is calculated as the proportion of phase 2 mergers completed in the past four years which resulted in SLCs after the parties had offered UiLs that were rejected in Phase 1. This approach is in line with our updated methodology explained in detail in the 2016/17 report.³¹ The SLC rate used to scale down the impact of all Phase 1 mergers in the 2017/18 assessment was 50%.
- 3.14 Using the approach described above, our estimates show that during the past three financial years (2015 to 2018) the merger regime saved consumers £488.5 million in total, giving an average of £162.8 million per year.
- 3.15 A substantial proportion of the 2017/18 benefits estimate relates to the Wood/Amec merger inquiry. The CMA concluded that the merger could lead to a worsening of the Parties' offers when tendering for contracts to service the offshore oil and gas sector. The SLC was mitigated when the CMA accepted the companies' offer to sell Amec Foster Wheeler's engineering and construction services, and operations and maintenance services.
- 3.16 The benefits from the UK merger regime are dependent on the cases that come to the CMA for assessment and are therefore driven, in part, by the economic climate and can vary significantly from year to year. They are also dependent on the composition of the merger being assessed. If anti-competitive mergers are proposed and prohibited or altered then the estimated direct benefits of the merger regime will be greater. Our estimates

³¹ CMA (July 2017), [CMA impact assessment 2016/17](#)

exclude benefits from mergers affecting UK consumers which are reviewed by the European Commission.³²

- 3.17 Benefit figures for mergers do not include the wider benefits, such as deterrence, of its mergers work and the wider merger regime. We would expect deterrence effects to be significant and therefore that having a merger control regime in itself prevents anticompetitive mergers from being proposed.

Market studies and market investigations

- 3.18 Market studies are examinations into the causes of why particular markets appear not to be working well for consumers and may lead to proposals as to how they might be made to work better. They take an overview of regulatory and other economic drivers in a market and patterns of consumer and business behaviour.
- 3.19 Markets may be referred for a market investigation for further analysis where there are reasonable grounds for suspecting that any feature, or combination of features, of a market in the UK is preventing, restricting, or distorting competition. In estimating consumer savings, we consider the impact of both market studies that have not resulted in a market investigation and completed market investigations. Given the wide variety of projects that our markets work covers, the exact method used to estimate impact differs from case to case. We include ex-ante estimates of impact from those projects where the CMA's recommendations and/or orders are expected to be implemented by the relevant bodies (e.g. regulators and other government departments) and therefore have a positive impact on consumers.
- 3.20 When estimating our impact from any markets project we also consider how likely the recommendations or orders are to be implemented by the relevant bodies. To account for the uncertainty associated with the market and policy context, and therefore with the overall effectiveness of the remedies, we use cautious assumptions when estimating the benefits. Moreover, where we think that the proposed remedies may not be fully implemented by the regulators, estimates are further scaled down by the assumed likelihood of implementation.
- 3.21 We estimate that the direct consumer benefits from the CMA's interventions through the markets regime were £2,315 million in total between the financial years 2015 and 2018, giving an average of £772 million per year. This

³² Mergers of businesses with EU and global turnover above a certain size fall within the jurisdiction of the European Commission. Mergers affecting trade between member states may also be reviewed by the European Commission.

accounts for around 65% of the total impact estimate over this three-year period. The market studies that concluded in the 2017/18 financial year were:

- (a) The care homes market study;³³ and
- (b) The digital comparison tools market study.³⁴

- 3.22 The impact estimations quantify the likely benefits arising from the recommendations or orders made by the CMA in each market study.
- 3.23 For the care homes market study, the impact assessment focuses on the CMA's recommendations to improve consumer protection and other quality measures, such as greater support for consumers choosing a care home. The assessment does not include any benefits arising from action taken to address the funding shortfall identified by the study.
- 3.24 The effectiveness of the care homes market study in delivering value to consumers relies on the government acting upon the CMA's recommendations.³⁵ Given this, we have scaled down our impact to account for the government's role in the implementation of the recommendations. We have also scaled down our impact to account for the government being influenced by other stakeholders making recommendations that are similar to the CMA's recommendations.
- 3.25 The digital comparisons tools (DCTs) market study made a number of recommendations to businesses, consumers and other government regulators aimed at making DCTs more effective and easier to use. DCTs are a very powerful tool for helping consumers compare products to find the best possible deal. Our assessment estimates the monetary value of consumer savings arising from increased DCT usage, which we expect to occur as a result of our recommendations. The impact we estimate using this methodology is likely to be conservative for a number of reasons, such as:
- (a) We have not accounted for benefits arising from better matching to consumers' needs because of improved use of quality metrics.
 - (b) Less time spent on DCTs to obtain quotes because of streamlined consumer journeys (e.g. as a result of data portability).

³³ CMA case: [care homes market study](#)

³⁴ CMA case: [Digital comparison tools market study](#).

³⁵ The government has responded to our study where they accept substantially all of the recommendations we have quantified. [Government Response to the Competition and Markets Authority's 'Care homes market study, final report'](#)

- (c) We only quantify benefits in the focus sectors of the market study.³⁶ However, the recommendations are also likely to lead to better consumer outcomes in other sectors in which DCTs operate.
- (d) We only quantified increased use of the largest DCTs.

³⁶ The four industries included were motor insurance, home insurance, energy and broadband.

4. Costs

- 4.1 Cost figures may fluctuate from year to year and as such will have an impact on the benefit to cost ratios reported in the CMA impact assessment. To smooth out any such fluctuations, we use a three-year moving average for total costs. This is consistent with the way in which we report estimated benefits.
- 4.2 For the purposes of calculating the benefit to cost ratio, the total costs of the CMA exclude the costs incurred in fulfilling the CMA's function with regard to the determination of regulatory appeals as we do not include any benefits from these in the impact assessment.
- 4.3 On this basis, the average annual CMA cost over the financial years 2015 to 2018 is estimated at £65 million.