ICAEW
REPRESENTATION 96/21

REFORMING COMPETITION AND CONSUMER POLICY

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ICAEW welcomes the opportunity to comment on the consultation paper *Reforming competition and consumer policy* published by BEIS on 20 July 2021, a copy of which is available from this link.

This response of 1 October 2021 has been prepared by the ICAEW Corporate Finance Faculty. Recognised internationally as a source of expertise on corporate finance issues and for its monthly *Corporate Financier* magazine, the faculty is responsible for ICAEW policy on corporate finance issues including submissions to consultations. The faculty's membership is drawn from professional services groups, advisory firms, companies, banks, private equity, law firms, consultants, academics, and brokers.

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OVERALL COMMENTS

Reforms to the UK's competition policy

1. The focus of our comments is on the proposals for a revised competition policy and reforms to the CMA's powers, as described in Chapter 1 of the consultation paper. We are not commenting on the consumer policy proposals. In general, we support changes that promote competition, growth, and innovation, and have the objective of reducing disproportionate burdens on businesses from market inquiries.

Interaction with other regulatory authorities

2. There is very little practical consideration in the paper of how the reforms to encourage proportionality and efficiency in the competition regime take into account the impact on businesses from the National Security and Investment (NSI) Act 2021. The wide scope of the NSI Act means a significant number of businesses must become newly familiarised with the new regime which, together with having to understand changes to the competition regime, have the potential to create barriers to growth and innovation. Businesses must be confident that where an acquisition is considered for both competition and national security reasons, the CMA and the Investment Security Unit will liaise to mitigate complexity and disproportionate disruption to the business.

Safeguards to enhanced CMA powers

3. The proposed expanded CMA powers must be used in a proportionate, consistent, and collaborative way.
4. We believe that there is scope to consider what improvements could be made to the CMA's approach to businesses under review. We recognise that not all businesses will have the same experience of the CMA, nonetheless we have received reports from members of unsatisfactory dealings, including
    - a confrontational approach where the CMA has refused to provide enough 'derogations' to enable the business under review to be run;
    - unworkable remedies; and
    - inconsistency in the CMA's approach in similar market concentration cases, resulting in material differences, both procedurally as well as on the substance of the assessment.
5. A collaborative, consistent and transparent approach will improve certainty, encourage businesses and individuals to cooperate with the CMA and help ensure the proposals achieve the desired outcomes.

Merger control thresholds

6. The new and revised merger control thresholds are welcome. It is not clear from the impact analysis if a bigger change to the turnover threshold and/ or a higher safe harbour threshold would yield potential benefits; this could be re-assessed at an early interval.

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