



Department
for Business
Innovation & Skills

COMPETITION REGIME

Government's Strategic Steer to
the Competition and Markets
Authority Consultation

JULY 2015

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Consultation on the Government's Strategic Steer to the Competition and Markets Authority

When the Competition and Markets Authority (CMA) was established the Government issued a non-binding Ministerial Strategic Steer outlining the Government's strategic priorities for the CMA. The Steer provides a transparent statement of how the Government sees competition fitting with its wider objectives for the economy. The Steer sits alongside the CMA's accountability framework and its legal duties, particularly to promote competition for the benefit of consumers.

This consultation is on the Government's proposed new Strategic Steer to the Competition and Markets Authority. The Steer outlines the strategic priorities for the CMA.

Issued: 20th July 2015

Respond by: 16th August 2015

Enquiries to: competition@bis.gsi.gov.uk

This consultation is relevant to: consumers, consumer organisations, businesses, trade bodies, economic regulators, the legal profession and the judiciary.

1. Foreword from the Secretary of State



Competition is the lifeblood of a healthy economy, energising our nation's productivity and growth. Strong competition in markets generates greater choice, lower prices and better quality goods and services for consumers.

All businesses should be free to enter markets, innovate and grow. This Government wants needless barriers – stopping dynamic and new-thinking businesses from accessing markets – to be swept away. Innovative new business models should be actively encouraged and helped to challenge the status quo in all markets. Their involvement in markets can urge greater competition, push out unproductive businesses and offer consumers far greater purchasing options.

This Government is clear that strong competition must be allowed to thrive, whenever possible, free from unnecessary intervention. The Competition and Markets Authority (CMA) plays a pivotal role in ensuring dynamic competition flourishes both domestically and internationally for the benefit of our nation's consumers. We want the CMA to examine markets – new and existing – freely and fearlessly to see how competition can be improved.

Personally, I have looked at my own Department and have stressed the importance of injecting greater competition into the markets that are key to connecting people to opportunity and prosperity. In particular, more competition in higher education will support our efforts to improve standards and ensure value for money for both students and taxpayers. I am also keen that the further education market functions well and delivers excellent outcomes for the nation.

I want all Government Departments to take a similar approach. Competition should be used as a serious alternative to regulation. Well-functioning markets should not need government intervention. If the market is not working properly then the first test should be whether competition tools could be used to deliver policy objectives. With that in mind, this Strategic Steer gives the CMA a clear mandate to help government design policy interventions and, when necessary, actively challenge any government rules and regulations if they consider they are negatively affecting competition.

The Steer fully aligns with the CMA's formal accountability framework, including the CMA's Performance Management Framework set by my Department and HM Treasury. The Steer does not affect either the scope of the CMA's powers or the legal tests that it must apply in making its decisions. It does, however, make clear that this Government is asking the CMA in carrying out its duties to focus on: exploring markets where competition could deliver greater choice and encourage more innovation and drive productivity; enforcing competition rules fairly and effectively; and removing unnecessary regulatory burdens on business wherever possible.

A handwritten signature in black ink, appearing to read 'S. Javid'.

The Rt Hon Sajid Javid MP
Secretary of State for Business, Innovation and Skills

2. Executive Summary

- 2.1 The Competition and Markets Authority's primary duty is to seek to promote competition, both within and outside the United Kingdom, for the benefits of consumers. To help the CMA deliver this duty, the Government, at the beginning of each Parliament, issues a non-binding Strategic Steer outlining its priorities for competition. The intention is that the Steer will remain in place for the length of the Parliament.
- 2.2 The Government is clear that the CMA should remain a strong, independent competition authority. The Steer does not affect either the scope of the CMA's powers or the legal tests that it must apply in making its decisions. However, competition can play a significant role in encouraging productivity and positive outcomes for consumers and the economy as a whole. It is these strategic objectives that the Government would like the CMA to have regard to when it carries out its activities.
- 2.3 In particular, this Government's Strategic Steer encourages the CMA to focus on three main elements:
- exploring markets where competition could be improved to promote greater consumer choice and encourage more innovation and productivity in sectors;
 - safeguarding fair competition and enforcing antitrust rules effectively; and
 - removing unnecessary regulatory burdens on businesses wherever possible.

A copy of the proposed Strategic Steer can be found in Annex A.

- 2.4 The Government is seeking views on the overall focus of the Steer and the length of time it should be in place for. The consultation will run for a month (from 13th July until 9th August). We intend to publish a full list of responses unless you notify us that the information is confidential.

3. How to respond

- 3.1 The consultation will begin on 20th July and will run for four weeks, closing on 16th August 2015.
- 3.2 When responding please state whether you are responding as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear who the organisation represents by selecting the appropriate interest group on the consultation form and, where applicable, how the views of members were assembled.
- 3.3 You can reply to this consultation online at <https://bisgovuk.citizenspace.com/ccp/cma-strategic-priorities> .

3.4 The consultation response form is available electronically on the consultation page: <https://www.gov.uk/government/consultations/competition-regime-competition-and-markets-authority-governments-strategic-priorities> (until the consultation closes).

3.5 The form can be submitted online/by email or by letter or fax to:

Gill Kiy
Competition Framework Team
Department of Business, Innovation and Skills
Third floor, 1 Victoria Street, London SW1H 0ET
0207 215 6647
competition@bis.gsi.gov.uk

3.6 A list of the organisations and individuals consulted is in Annex D. We would welcome suggestions of others who may wish to be involved in this consultation process.

3.7 You may make printed copies of this document without seeking permission.

3.8 BIS consultations are digital by default but if required printed copies of the consultation document can be obtained from:

BIS Publications Orderline
ADMAIL 528
London SW1W 8YT
Tel: 0845-015 0010
Fax: 0845-015 0020
Minicom: 0845-015 0030
<https://www.gov.uk/government/publications?departments%5B%5D=department-for-business-innovation-skills>

Or

Gill Kiy
Competition Framework Team
Department of Business, Innovation and Skills
Third floor, 1 Victoria Street, London SW1H 0ET
0207 215 6647
competition@bis.gsi.gov.uk

3.9 Other versions of the document in Braille, other languages or audio-cassette are available on request.

4. Confidentiality & Data Protection

4.1 Information provided in response to this consultation, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information

Regulations 2004). If you want information, including personal data that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

- 4.2 In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

5. Help with queries

- 5.1 Questions about the policy issues raised in the document can be addressed to:

Gill Kiy
Competition Framework Team
Department of Business, Innovation and Skills
Third floor, 1 Victoria Street, London SW1H 0ET
0207 215 6647
competition@bis.gsi.gov.uk

The consultation principles are in Annex B.

6. The proposals

- 6.1 This Government Steer to the Competition and Markets Authority (CMA) replaces the current Steer. It focuses on promoting long-term healthy competition which will improve efficiency, productivity and outcomes for consumers. This is in line with the CMA's single primary duty to "seek to promote competition, both within and outside the UK, for the benefit of consumers", and its aim "to make markets work well for consumers, businesses and the economy". A full copy of the new Steer to the CMA can be found in Annex A.

7. Consultation questions

- 7.1 The Government is seeking your views on the overall approach of the Strategic Steer and the length of time it should be in place for.

8. What happens next?

- 8.1 This consultation exercise will close on 16th August 2015. The Government will publish all of the responses received, unless specifically notified otherwise (see data protection section above for full details).

8.2 The Government will, within four months of the close of the consultation, publish a response and issue the Strategic Steer.

Annex A: Strategic Steer for the Competition and Markets Authority

“The most important single central fact about a free market is that no exchange takes place unless both parties benefit.” – Milton Friedman

Increasing productivity is central to our nation's long-term economic health, benefiting both consumers and businesses.

Strong and fair competition in markets is key to this, generating greater choice, lower prices, and better-quality goods and services for consumers, while also promoting growth and innovation on the supply side.

Throughout history, free and open markets have consistently shown themselves to be far more balanced and effective than anything government can deliver.

Government bureaucracies cannot compete with the impressive ability of open and fair markets to deliver benefits for customers. So during this Parliament we want to see strong competition and consumer empowerment employed as alternatives to regulation wherever possible, with the impact on competition factored in to the government policy-making process. The Competition and Markets Authority (CMA) has a vital role to play in making this happen.

The speed and pace of technological change is phenomenal: new markets and services are opening up all the time and the rights of consumers need to be protected in all of them. We want the CMA to leave no stone unturned when considering all markets whether old or new, exploring all factors that may impact on competition across a range of sectors.

Understanding the evolution and nature of markets, as well as the impact of technology on consumer purchasing and business productivity, will help ensure that competition flourishes and consumers benefit.

Competition is also a key driver to innovation, applying pressure on businesses to constantly improve. New business entrants and new business models should be actively encouraged in all markets. The CMA has a pivotal role to play in ensuring that there are no barriers preventing new businesses accessing or expanding in existing markets. On the flipside, there is a role for the CMA in identifying market structures that create barriers to exit for unproductive businesses.

This Government's Steer to the CMA replaces the current Steer. It focuses on promoting long-term healthy competition that will improve efficiency, productivity and outcomes for consumers. This chimes entirely with the CMA's single primary duty to “seek to promote competition, both within and outside the UK, for the benefit of consumers”, and its aim “to make markets work well for consumers, businesses and the economy”.

We remain fully supportive of the CMA's status as a strong, independent competition authority. This Steer has been set with the CMA's legal duties and Performance Management Framework in mind.

The CMA will be expected to have regard to the new Steer during its activities but retains full independence in how it approaches its work, its selection of cases and the tools it uses to tackle them. A number of its functions are demand-led, such as merger control, market investigations referred by the sector regulators, and regulatory appeals. In carrying out all of its functions it will apply the appropriate legal tests, irrespective of the Steer.

The Steer

The Government considers that in meeting its primary duty the CMA should ensure that dynamic competition is allowed to flourish, thereby increasing productivity and sustaining economic growth for the benefit of consumers. In particular:

The CMA should energise its work **exploring markets where competition could deliver greater consumer choice and encourage more innovation and productivity in sectors**. The CMA should cast the net as wide as possible and feel empowered to study any market it considers to be in need of greater competition. The CMA should robustly tackle the constraints on competition in these markets using the most effective competition and/or consumer enforcement tools. In doing so it should continue to focus on:

- **increasing consumer confidence to drive competition in the marketplace and pressure businesses to innovate**. The CMA should consider consumer behaviour and actions when assessing whether a market is operating properly, looking at issues like failure to compare products or difficulty in switching. Where they identify concerns, the CMA should rapidly recommend solutions to help address the issues and promote strong competition;
- developments in **new emerging markets, such as online digital market places and use of data**. The CMA should develop expertise in the impact new emerging markets are having on competition, innovation and consumer choice. Key issues are likely to be the role consumer data is now playing in the market place and how to encourage effective competition in these new markets;
- removing barriers that prevent **new start-up businesses or new disruptive business models from accessing or expanding in existing markets**. Existing infrastructure ownership or unnecessary regulatory requirements may prevent new firms or business models from entering existing markets. The CMA should explore whether business activities, market structures or regulation can create barriers to new entrants. Where it identifies barriers to accessing markets it must recommend how these barriers could be reduced to help improve competition and consumer choice. The CMA should address any market structures that create barriers to exit for unproductive businesses, inhibiting effective competition;
- promoting the **importance of open and fair competition globally**. Fair access to open markets that allows UK businesses to compete on a level playing field internationally is crucial to growth. The CMA should play a leadership role in the EU and, more widely, ensuring that competition rules serve the interests of consumers rather than the bureaucracies that create them;
- **longer-term dynamic competition through innovation and the development of new business models**. The CMA should consider whether there are systemic barriers to sustainable competition that prevent long-term growth. In particular, it should consider potential competition and efficiency concerns in business-to-business markets and in the supply chain that may impact on consumers;
- exploring innovative ways to **inject greater competition into markets for public services, where this has the power to improve delivery for consumers**. The CMA should use its knowledge to actively challenge Government and encourage the use of effective competition to improve delivery and to promote more diversity and choice for UK consumers. It should

not be afraid to raise objections at the highest levels if Ministers or Civil Servants are failing to use competition effectively; and

- playing a leadership role with **regulators that have competition powers**, especially those that are new to the concurrency regime. The CMA should encourage those regulators to make greater use of their competition powers and to tackle anticompetitive actions in regulated markets.

The CMA should remain a strong defender of fair competition and **enforce antitrust rules fairly and effectively** ensuring that its decisions are robust. The CMA should:

- **help businesses of all sizes and in all sectors to understand competition law and what they need to do to comply.** The CMA should work with trade associations and advice organisations to increase awareness and understanding of competition law and to promote best practice on compliance;
- **use a mix of powers, including the new provisions in the Enterprise and Regulatory Reform Act 2013**, to detect and punish cartels and other abuses, and deter anticompetitive actions; and
- **conclude enforcement cases as quickly as possible** ensuring that it has the maximum possible positive impact on the welfare of consumers. The CMA should consider additional measures to streamline processes and improve the pace of decision making.

The Government is committed to **removing unnecessary regulatory burdens on businesses wherever possible**. Using competition tools can often provide an alternative to regulation, and we encourage the CMA to act as a leader in this regard, particularly with sector regulators. The CMA can play a significant role in reducing burdens on businesses and securing better outcomes for consumers by:

- examining its own practices to ensure that the **burdens it imposes on businesses when carrying out its activities are minimised**;
- partnering with economic regulators to **use effective competition tools** to promote changes in markets rather than prescriptive licensing conditions and regulatory requirements;
- building a **strong dialogue with sectoral regulators** using the UK Competition Network to ensure that the overall competition regime is coordinated and regulatory practices complement each other; and
- using its **powers to make recommendations on the impact on competition of legislative proposals and to challenge any rules and regulations** that may act as a barrier.

Conclusion

The intention of this Steer is to support the CMA in achieving its objectives and ensure its interventions deliver tangible, positive benefits for UK consumers and the UK economy. The

CMA's actions and interventions could have a significant impact on growth and innovation. It is important that the CMA both proactively enforces the law against anti-competitive actions and delivers benefits to UK consumers. We expect the CMA to advise Government on new ways of delivering services or intervening in the economy in ways not harmful to competition.

The CMA has a clear mandate to look at Government rules and regulations and advise on any implications they might have on competition. In order to drive innovation and improve productivity and choice, where appropriate this needs to apply to public services just as much as the private sector.

There will be a presumption that the Government will accept all of the CMA's published recommendations unless there are strong policy reasons not to do so. The Government commits to responding to the CMA's recommendations within 90 days, clearly indicating the steps that it will take in response to recommendations or the reasons that it is unable to take forward recommendations. Finally, the Government intends to promote productivity and remove unnecessary burdens on business and consumers wherever possible, and we expect that the CMA will make an important contribution toward this goal.

Annex B: Consultation principles

The principles that Government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the consultation principles.

<https://www.gov.uk/government/publications/consultation-principles-guidance>

Comments or complaints on the conduct of this consultation

If you wish to comment on the conduct of this consultation or make a complaint about the way this consultation has been conducted, please write to:

Angela Rabess
BIS Consultation Co-ordinator,
1 Victoria Street,
London
SW1H 0ET

Telephone Angela on 020 7215 1661
or e-mail to: angela.rabess@bis.gsi.gov.uk

However if you wish to comment on the specific policy proposals you should contact the policy lead (see section 5).

Annex C: Government's Strategic Steer for the Competition and Markets Authority Response Form

A copy of this consultation can be found at:

<https://www.gov.uk/government/consultations/competition-regime-competition-and-markets-authority-governments-strategic-priorities>

You can also complete your response online through:

<https://bisgovuk.citizenspace.com/ccp/cma-strategic-priorities>

Alternatively you can email or post the completed response to:

Gill Kiy
Competition Framework Team
Department of Business, Innovation and Skills
Third floor, 1 Victoria Street, London SW1H 0ET
0207 215 6647
competition@bis.gsi.gov.uk

The closing date for this consultation is **16/08/2015**

The Department may, in accordance with the Code of Practice on Access to Government Information, make available, on public request, individual responses. If you wish your response to remain confidential you must provide a reason. BIS intends to publish all the responses to this consultation. Do you agree for your response to be published?

Yes

No

Your details:

Name:

Organisation (if applicable):

Job title (if applicable):

Address:

Telephone Number:

Please tick the box from the list that best describes you, your company or your organisation:

| | |
|--------------------------|---|
| <input type="checkbox"/> | Business representative organisation/trade body |
|--------------------------|---|

| | |
|--|-----------------------------------|
| | Central government |
| | Charity or social enterprise |
| | Individual |
| | Large business (over 250 staff) |
| | Legal representative |
| | Local Government |
| | Medium business (50 to 250 staff) |
| | Micro business (up to 9 staff) |
| | Small business (10 to 49 staff) |
| | Trade union or staff association |
| | Other (please describe) |

Question 1 – Government's proposed Strategic Steer

Do you agree with the general focus and approach of the Government's Steer to the Competition and Markets Authority?

Answer: Yes No Not sure

Comments:

Questions 2 – Government's proposed Strategic Steer

Are there any other areas that you think should be included in the Steer?

Answer: Yes No Not sure

Comments:

Question 3 Duration of the Steer

Do you agree that the Steer should be in place for the length of the Parliament?

Answer: Yes No Not sure

Comments:

Question 4 Do you have any other comments that might aid the consultation process as a whole?

Please use this space for any general comments that you may have, comments on the layout of this consultation would also be welcomed.

Thank you for taking the time to let us have your views. We do not intend to acknowledge receipt of individual responses unless you tick the box below.

Please acknowledge this reply

At BIS we carry out our research on many different topics and consultations. As your views are valuable to us, would it be okay if we were to contact you again from time to time either for research or to send through consultation documents?

Yes No

Annex D: List of Individuals/Organisations consulted

Regulators

Competition and Markets Authority (CMA)
Office of Communications (OFCOM)
Financial Services Authority (FSA)
FSA Consumer panel
Utility Regulator for Northern Ireland
Office of Gas and Electricity Markets (OFGEM)
The Water Services Regulation Authority (OFWAT)
Office of Rail regulation (ORR)
Civil Aviation Authority (CAA)

Business Organisations

UK Competitive Telecommunications Association
Confederation of British Industry
British Chambers of Commerce
Federation of Small Businesses

Consumer Organisations

Citizens Advice
Citizens Advice Scotland
Consumer Council for Northern Ireland
Which?

Legal Community

City of London Law Society
Competition Law Association
In-house Competition Lawyers Association
The Law Society
The Law society of Northern Ireland
The Law Society of Scotland
UK Competition Law Association



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