

Competition impact assessment

Part 1: overview

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1. Purpose and scope of these guidelines

- 1.1 The Competition and Markets Authority (CMA) is a non-ministerial government department, established by the Enterprise and Regulatory Reform Act 2013, to carry out certain functions on behalf of the Crown. The CMA's stated mission is to make markets work well for consumers, businesses and the economy. In pursuit of this mission, the CMA can give information and advice to Ministers and their departments in respect of any proposed changes in law, regulation or policy.¹
- 1.2 The CMA can provide advice and training, on request, to policymakers and other specialists (economists and lawyers) who are introducing a new measure and need to understand whether the changes are likely to have an impact on competition in existing or new markets.
- 1.3 Given that the CMA has limited resources, policymakers should in the first instance conduct their own assessment of whether or not their proposals will have an impact on competition. This publication aims to help policymakers conduct such an assessment. Where there is a complex competition or consumer issue, the CMA may be able to provide further assistance and support.

Why consider the impact a policy or regulatory proposal will have on competition?

- 1.4 Competition is a process of rivalry between firms and, where it is effective, encourages firms to deliver benefits to customers in terms of lower prices, higher quality and more choice.
- 1.5 Competing firms may focus on offering the lowest price, particularly where products are standardised. Most suppliers² will try to compete in a number of ways in addition to price, for example by developing new improved products, by offering products of differing quality or characteristics, by branding and advertising the differences in their products relative to their competitors', or by using different sales channels. This list is not exhaustive. Competing suppliers will seek to find a unique selling point that offers consumers advantages over rival goods or services.
- 1.6 The CMA's publication on [Productivity and Competition: a summary of the evidence](#) outlines the theoretical and empirical evidence on the relationship

¹ Section 7(1), Enterprise Act 2002.

² The term 'suppliers' includes any private entity, any public body acting in as an 'undertaking' engaging in economic activity, and any not-for-profit firm that is competing in the market.

between competition and productivity. The evidence suggests that competition drives productivity in three main ways. First, within firms, competition acts as a disciplining device, placing pressure on the managers of firms to become more efficient. Secondly, competition ensures that more productive firms increase their market share at the expense of the less productive. These low productivity firms may then exit the market, to be replaced by higher productivity firms. Thirdly, and perhaps most importantly, competition drives firms to innovate, coming up with new products and production processes which can lead to step-changes in efficiency.

- 1.7 Laws, regulations and government interventions that bear on economic activity can restrict competition in a market. There is a significant body of literature demonstrating that removing regulatory restrictions on markets can have a positive impact on competition.³ There is also strong evidence that low levels of product market regulation tend to be associated with greater productivity. Removing unnecessary restraints on competition, or preventing the introduction of unnecessarily restrictive regulations can ensure government supports competition, productivity and economic growth.
- 1.8 Policymakers in the UK Government who seek Reducing Regulation Committee clearance for their regulatory proposal may need to conduct an impact assessment. The [Better Regulation Framework Manual](#) states that, as part of the impact assessment process, policymakers should consider whether the proposal might have an impact on competition.⁴ If the policy is likely to have an impact on competition, policymakers should carry out further analysis of the impact on competition. These guidelines provide policymakers and economists with assistance in identifying markets that might be affected by a new policy and in undertaking a competition impact assessment.
- 1.9 Whilst impact assessment processes in the Devolved Administrations differ, these guidelines should also provide a framework to help policymakers working in Devolved Administrations to consider the impact of their policies on competition.
- 1.10 Early consideration of the competition implications of a policy may also help to mitigate the risk that the CMA raises concerns about a policy once the proposal becomes draft legislation. The Small Business, Enterprise and Employment Act 2015 amended Section 7 of the Enterprise Act 2002 to give the CMA a new power, to use at its discretion, to make and publish written

³ For a fuller review of the literature please see CMA (2015), Productivity and Competition: a review of the evidence.

⁴ The Better Regulation Framework Manual was published under the last administration and provides further guidance on when Reducing Regulation Committee clearance is needed and when an impact assessment should accompany clearance requests

recommendations to ministers on the impact of proposals for legislation on competition within any UK market(s) for goods or services.⁵ Considering competition early in the policy making process may mean that the CMA is less likely to publically comment at a later date.

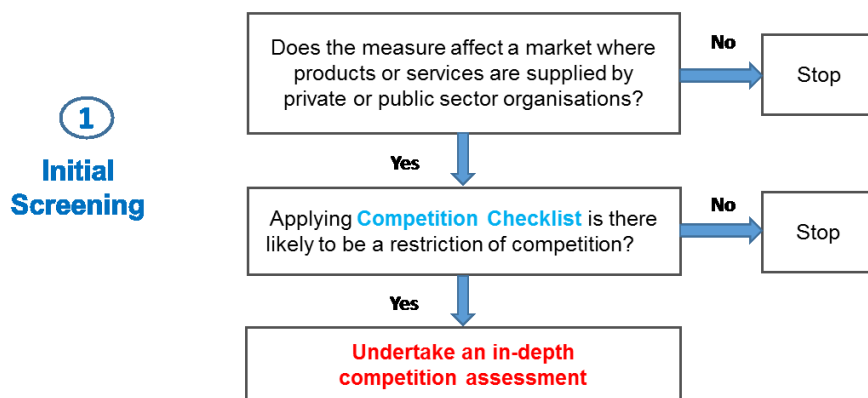
- 1.11 These guidelines replace an earlier version published by the Office of Fair Trading in 2007 and should be read in conjunction with the Better Regulation Executive's Better Regulation Framework Manual and the [Treasury Green Book](#).
- 1.12 These guidelines are written for policymakers and do not assume technical knowledge or understanding of economics. However, the CMA recommends that at an early stage in the process policymakers advise their departmental specialists (economists and lawyers) that they are considering the effect of the proposed policy on competition.
- 1.13 Policymakers and economists who wish to speak to the CMA about undertaking a competition assessment with complex issues or who want to request further explanation of this document or training should email us at advocacy@cma.gsi.gov.uk.

⁵ For more information about the power to comment, see: CMA (2015), [CMA gains power to make written recommendations on proposals for legislation](#).

2. What you need to do to complete a competition impact assessment

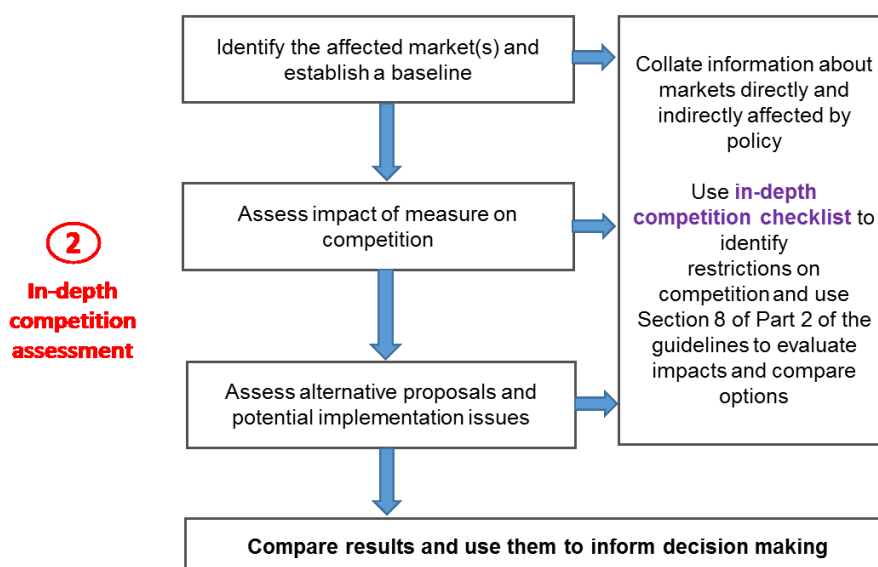
2.1 In order to complete a competition impact assessment, policymakers need to conduct the steps shown in Figure 1 below.

Figure 1: Completing a competition impact assessment



Competition checklist

1	Will the measure directly or indirectly limit the number or range of suppliers?
2	Will the measure limit the ability of suppliers to compete?
3	Will the measure limit suppliers' incentives to compete vigorously?
4	Will the measure limit the choices and information available to consumers?



Stage 1: Initial screening

- 2.2 Before starting the impact assessment, policymakers should set out the purpose of their proposed measure.⁶ This requires policymakers to think about why government intervention is necessary. Once the purpose of the new measure has been understood, it is important to undertake an initial screening to see whether an in-depth assessment of the impact on competition is warranted.
- 2.3 Step 1 of the initial screening asks whether the proposal affects a market where products or services are supplied by the private or public sector.⁷ It could be that the measure clearly impacts on the supply of certain products or services. For example, a ban on apple advertising would directly impact on the market for apples and potentially the market for fruit. However, in certain cases the proposal may lead to changes in areas where no market exists and there is no possibility of an impact on competition arising from the change. For example, a proposal requiring government departments to be structured in a certain way is unlikely to have a significant impact on a market and, in turn, competition.
- 2.4 Should a market be affected by the proposal, policymakers should move to the next stage in the initial screening and apply the four questions which form the competition checklist, as set out below. In doing so, it should be possible to identify whether the proposal falls into one of the areas likely to raise concern. A competition concern may be identified if at least one of these conditions outlined in Table 1 below are met.

Table 1: Competition checklist

1	Will the measure directly or indirectly limit the number or range of suppliers?
2	Will the measure limit the ability of suppliers to compete?
3	Will the measure limit suppliers' incentives to compete vigorously?
4	Will the measure limit the choices and information available to consumers?

- 2.5 If the answer to any of these question is 'yes', then policymakers should move to undertake an in-depth assessment of the likely impact.

⁶ These guidelines are relevant to different types of government intervention, including regulation, changes in entitlement to services, buying or selling assets, and licencing, franchising and contracting. We use the terms proposal and measure to capture the wide range of interventions to which these guidelines are relevant.

⁷ These guidelines are relevant to proposals that affect existing markets and to proposals that will create new markets, for example, purchasing a new service which is not currently supplied by the private sector.

Stage 2: In-depth competition assessment

- 2.6 Should policymakers consider that an in-depth competition assessment is required then they will then need to identify the affected market(s), establish a baseline and conduct an assessment of the likely impact the policy will have on the market compared to the baseline. Part 2 of these guidelines provides further detail on how to conduct an in-depth assessment.
- 2.7 In doing so, policymakers should seek to provide an in-depth answer to the relevant competition checklist question(s). These questions are presented in the in-depth competition checklist at Table 2 below.

Table 2: In-depth competition checklist

Competition Checklist Question	Reference for further information in Part 2
<p>Q1a: will the measure directly limit the number or range of suppliers by:</p> <ul style="list-style-type: none"> • Awarding exclusive rights to supply? • Purchasing, franchising or licencing from a single supplier or a restricted group of suppliers? • Introducing a licensing scheme that places a fixed limit on the number of suppliers? • Introducing a licencing scheme that controls quality? 	<p>See Chapter 3.</p> <p>Examples to help you consider whether this issue applies to your proposal:</p> <ul style="list-style-type: none"> • Commercial Use of Public Information (CUPI) market study, page 12, Part 2 • Taxi Licences, page 15, Part 2 • Licensing scheme for will writers, page 17, Part 2
<p>Q1b: will the measure indirectly limit the number or range of suppliers by:</p> <ul style="list-style-type: none"> • Significantly raising the costs of current suppliers, causing them to leave the market? • Significantly raising the costs of new suppliers relative to existing suppliers? • Significantly raising the costs of some current suppliers relative to other current suppliers? 	<p>See Chapter 3.</p> <p>Examples to help you consider whether this issue applies to your proposal:</p> <ul style="list-style-type: none"> • Grandfathering taxi slots at a train station, page 19 • Competitive neutrality in the higher education sector, page 21
<p>Q2: will the measure limit the ability of suppliers to compete by:</p> <ul style="list-style-type: none"> • Controlling or substantially influencing the price a supplier may charge? • Controlling or substantially influencing the characteristics of the products supplied? • Limiting the sales channels a supplier can use, or the geographic area in which a supplier can operate? • Substantially restricting the ability of suppliers to advertise their products? • Introducing restrictions on production processes or how suppliers are governed? 	<p>See Chapter 4.</p> <p>Examples to help you consider whether this issue applies to your proposal:</p> <ul style="list-style-type: none"> • Price controls in Greece, page 23 • Price caps in the payday lending sector, page 24-25 • Regulating the quality of bottled water, page 26 • US motor vehicle manufacturers, page 28

<p>Q3: will the measure limit suppliers' incentives to compete vigorously by:</p> <ul style="list-style-type: none"> • Incentivising suppliers to coordinate activities over which they would ordinarily compete? 	<p>See Chapter 5.</p> <p>Examples to help you consider whether this issue applies to your proposal:</p> <ul style="list-style-type: none"> • Risks created by policies that encourage information sharing, page 32
<p>Q4: will the measure limit the choices and information available to consumers by:</p> <ul style="list-style-type: none"> • Limiting the ability of consumers to decide from whom they purchase? • Changing the information available to consumers but not improving their ability to make informed decisions? • Increasing the cost of changing supplier? 	<p>See Chapter 6.</p>

2.8 Conducting the in-depth impact assessment may require the policymaker to:

- consider whether the reasoning and issues outlined in the relevant chapters in Part 2 applies to their policy proposal;
- gather further information through engagement with suppliers and customers to get a better indication of what impact the proposal will have on supplier and consumer incentives in the affected markets; and/or
- employ more sophisticated empirical techniques to assess the likely impact of the proposal on price, quality, quantity and innovation in the affected markets.

2.9 Part 2 sets out in detail how impact can be assessed using both qualitative and quantitative techniques.

Considering alternative policy proposals

2.10 Where a proposal is likely to adversely affect competition in an affected market, policymakers should consider whether there are alternative proposals that will achieve the same policy objective but with less adverse effects. Part 2 provides an overview of some alternatives and the techniques that can be used to compare different options.

2.11 Ideally, alternative policy proposals should be identified that have a less adverse effect on competition but still enable policy objectives to be achieved. If this not possible, then, as a principle of good policy making, it is important

that the issue is raised in discussions with decision makers and there is a clear justification as to whether and why other considerations are trumping the impact on markets.

Predicting implementation issues

- 2.12 Policymakers should also consider the means by which the measure is implemented. It may be the case that implementation creates competition issues that were not foreseen at the consultation or early stage of impact assessment.
- 2.13 For example, a consultation following the initial impact assessment might conclude that changes to product standards are required. So, for example, a consultation on the roll-out of solar panels might conclude that minimum efficiency standards are required in order for solar panel firms to be eligible for a subsidy. Such a requirement might distort the market for panels themselves as fewer models or manufacturers might be compliant than originally envisaged. The price for solar panels might subsequently be higher than was originally envisaged when a competitive market with a full range of suppliers was predicted.
- 2.14 When policymakers use the consultation process to check data and information about the market(s) affected by their proposals, they should remain aware that views expressed, or data or information supplied, may be selective and could well reflect vested interests. Policymakers should carefully consider stakeholders' interests when assessing the validity of their views and whether the evidence supports assertions made.

Plan to evaluate impact on competition

- 2.15 It is also advisable at an early stage of the policy making process to consider how to evaluate the impact of a regulatory proposal. HM Treasury's Green Book provides further guidance of evaluating policies against their stated objectives.
- 2.16 Table 3 below provides further insight into the types of indicator and data that could usefully be analysed to determine whether the policy has had a negative impact on competition. Most of these can either be directly observed, drawn from readily available public sources or developed using limited research and basic analysis.

Table 3: Planning to evaluate impact on competition

Has the policy led to worsening market trends, demand and supply conditions...	...and have market outcomes got worse?
Market trends <ul style="list-style-type: none"> • Significant increase in market concentration levels • Reduction in market entry, expansion and exit 	<ul style="list-style-type: none"> • Reduction in product diversity or production of close substitutes • Increase in prices • Decrease in consumption levels • Reduction in efficiency • Decrease in quality of supply
Availability of information to consumers <ul style="list-style-type: none"> • Reduction in availability of useful information • Increase in the complexity of information 	
Entry and expansion conditions <ul style="list-style-type: none"> • Increase in the cost of entering and operating at the Minimum Efficient Scale needed to achieve reasonably competitive level of costs • Decrease in the likelihood of entry within a timescale that would affect incumbents' incentives • Firms becoming more capacity constrained • Increase in the cost of exiting the market 	
Firms' behaviour <ul style="list-style-type: none"> • Closer correlation between firms' behaviour (eg investment decisions and pricing decisions) • Retrenchment into 'core' territories and a reduction in head-to-head competition • A reduction in production of close substitutes • Decline or absence of innovation in product characteristics or business models 	
Consumer behaviour <ul style="list-style-type: none"> • More obstacles to switching between suppliers • Reduction in switching levels • Increase in firms exploiting behavioural biases 	

Positive impact on competition

2.17 These guidelines are designed to help policymakers analyse whether policy proposals will have a negative impact on competition. Nevertheless, the guidelines may also be useful for policymakers seeking to introduce pro-competitive policy changes. For example, the four competition impact assessment questions explored in the guidance can be reversed to identify potentially pro-competitive measures:

- Does the proposal directly or indirectly increase the number or range of suppliers?
- Does the proposal remove restrictions on the ability of suppliers to compete?
- Does the proposal increase suppliers' incentives to compete?

- Does the proposal allow consumers to make more informed choices?

2.18 Considering whether a policy may have a pro-competitive effect is important as measures that increase competition can reasonably be expected to drive economic growth and benefit society.