

# CMA Annual Plan 2016/17 consultation

Summary of responses

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## 1. Overall

- 1.1 The feedback received during consultation has reflected widespread support for the priorities and commitments set out in the Competition and Markets Authority's (CMA) 2016/17 draft Annual Plan (the Plan).
- 1.2 There was particular support for the increased focus on swift and effective enforcement of competition and consumer law, complemented by activities to raise awareness of, and promote compliance with, the law. The direct engagement with businesses to support the latter activities was welcomed.
- 1.3 Respondents also welcomed the CMA's continued focus on preventing and addressing consumer harm, alongside the focus on the needs and challenges faced by small and medium-sized enterprises.
- 1.4 Some respondents sought greater clarity from the CMA on its plans, including for its engagement with the Scottish government and with businesses. Alongside support for the CMA's advocacy to policymakers, there were calls for the scale of this work to increase and for the CMA to be more transparent over advice given to central and local government, as well as other regulators and public bodies.
- 1.5 Several respondents expressed willingness to assist the CMA in meeting its priorities for the coming year, including on engagement with businesses across the UK and the promotion of its materials to maximise compliance with the law.
- 1.6 The 14 formal responses to our consultation came from organisations that between them represent significant numbers of citizens, consumers and businesses across the United Kingdom. These formal responses are also complemented by group and individual discussions during the consultation period with representatives of other organisations.

## 2. Enforcement and consumer protection

- 2.1 Respondents welcome the CMA's increased focus on carrying out swift and effective enforcement of competition and consumer law.
- 2.2 A consumer organisation welcomed the continued balance of competition and consumer protection and the recognition that effective enforcement is ultimately good for economic growth.
- 2.3 A Scottish organisation responded that the final Plan should provide more detail on enforcement activity planned for the year, in particular in the devolved nations. Another Scottish organisation stated that it would be useful to include details of enforcement actions to be undertaken across the UK with a greater commitment to a geographic spread of activity.
- 2.4 A consumer organisation asked the CMA to monitor the implementation and effectiveness of Alternative Dispute Resolution Schemes, from both a consumer protection and compliance perspective.
- 2.5 Two consumer organisations asked for clarification on how the CMA will use Enhanced Consumer Measures (ECMs), which were introduced as part of the Consumer Rights Act in October 2015.
- 2.6 A consumer organisation suggested that the CMA should be more transparent with regards to information published on its website, particularly on enforcement cases. The respondent believes that there would be clear benefits in making information public, including about the nature of the potential breach and the expected timescales.

### The CMA view

- 2.7 The CMA has updated the final Plan with new projects – enforcement and otherwise, which have become confirmed since the draft Plan was published for consultation in December 2015.
- 2.8 The CMA's selection of enforcement projects is intelligence-led and subject to internal prioritisation; hence it is not always possible to provide clarity on the exact work which the CMA will undertake over the course of the full year. The CMA is committed to UK-wide enforcement of competition and consumer law. Paragraph 2.7 states that 'We seek a balanced portfolio of cases – including large cases that have wider impact, and smaller, more local cases, that send the message that no business is beyond the reach of competition enforcement. We want to cover the nations and regions of the UK, and a variety of sectors'.

- 2.9 The CMA does not have any responsibility to monitor the implementation and effectiveness of the Alternative Dispute Resolution Schemes. In the regulated sectors, the regulators will act as the competent authority. In all other sectors, the Secretary of State for Business, Innovation and Skills is the generic competent authority and has appointed the Chartered Trading Standards Institute (CTSI) to carry out these functions on his behalf.
- 2.10 We will consider the use of ECMs, as appropriate, on a case-by-case basis when tackling consumer law infringements under Part 8 of the Enterprise Act 2002. ECMs became available to enforcers on 1st October 2015 and only apply to breaches of consumer law occurring from that date onwards, so their use is still bedding in.
- 2.11 The CMA is committed to its aims to be open and transparent about the work it does and how it engages with those directly involved in or affected by its work, while seeking to maintain (as appropriate) the confidentiality of information it obtains in the exercise of its functions. Its policy and approach to transparency and disclosure is available on GOV.UK.<sup>1</sup>
- 2.12 The CMA is committed to consistency in its approach to transparency and public announcements, and will keep this policy and approach under review as appropriate.

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<sup>1</sup> CMA (January 2014), [Transparency and disclosure - statement of CMA's policy and approach](#) (CMA6).

### 3. Compliance

- 3.1 The CMA's intention to make increasing use of communications tools to raise awareness of the law, change behaviour, minimise the burden of complying (especially for smaller firms), and encourage complaints was welcomed by several respondents. One respondent highlighted that while active enforcement should remain a CMA priority, the CMA's attempts to engage with and educate businesses in different sectors will pay genuine dividends over time.
- 3.2 A business representative organisation agreed with the CMA that the majority of – in fact, almost all – businesses want to comply with the law and engage in open, free and fair markets. The same respondent emphasised that it is crucial that the CMA does everything possible to ensure that business owners and directors are as up to date as possible with competition law so that they are fully compliant.
- 3.3 Respondents welcomed the CMA's focus on small and medium-sized businesses in its awareness-raising and compliance activities, building on the 2015 publication of its compliance tools tailored for small businesses.<sup>2</sup> One respondent recommended that the CMA 'thinks small first' in its compliance work, and carries out awareness-raising and compliance activities in relation to unfair contract terms and the Consumer Rights Act 2015.
- 3.4 A respondent from Scotland asked whether reference to any future digital campaigns could be mentioned in the Annual Plan, to help inform stakeholders.
- 3.5 A consumer organisation recommended that the CMA takes opportunities to join up guidance for businesses on key areas of competition and consumer protection law.
- 3.6 A Scottish consumer organisation welcomed any additional guidance material on unfair contract terms, while emphasising that care should be taken not to replicate material already available through Chartered Trading Standards Institute's 'Business Companion' website, as it is important that businesses need to consult as few sources of information as practicable.

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<sup>2</sup> CMA press release (18 November 2015): [CMA moves to boost small businesses' competition law knowledge](#).

## **The CMA view**

- 3.7 The CMA is committed to strong enforcement of competition and consumer law to deter other organisations from breaking it. We see the effective use of compliance tools as necessary complements to such enforcement in achieving our mission of making markets work well for consumers, businesses and the UK economy. We welcome some respondents' offers to assist with the promotion of compliance materials to businesses and trade bodies in different parts of the UK.
- 3.8 The CMA will be working to 'think small first' in its compliance work for the areas of law which are its responsibility, namely competition law and unfair contract terms in consumer law. In March 2016, the CMA will release materials to help businesses to understand and comply with unfair contract terms legislation.
- 3.9 Building alliances with partners to help spread awareness of the law is integral to our ways of working. In terms of highlighting future digital compliance campaigns, we are not currently in a position to do so in our Annual Plan but we will engage directly with the respondent and other relevant partners to let them know about plans as they evolve.
- 3.10 The CMA is working closely with a range of partners, including CTSI, and will ensure that any new compliance materials for businesses complement, rather than duplicate, existing materials, including those available through the CTSI Business Companion website.

## 4. Markets and mergers

- 4.1 A business representative organisation requested more clarity on the circumstances in which the CMA would not refer a merger for phase 2 investigation, even if it believes that it is or may be the case that the merger has resulted or may be expected to result in a substantial lessening of competition in a UK market.
- 4.2 The same organisation, as well as other business representative organisations, welcomed the CMA's intention to undertake work on price comparison websites (PCWs) in the coming year, as well as the increased focus on the public sector and its procurement strategy. There were offers from some respondents to support the CMA in this work.
- 4.3 A consumer organisation, which also welcomed the CMA's focus on PCWs, warned about low levels of digital inclusion and consumer digital proficiency, particularly in Northern Ireland.
- 4.4 The CMA was urged to encourage regulators across the board to take a less-is-more approach; where insurgent firms or business models are disrupting older models, the emphasis should be on creating a level playing field at the lower end of the regulatory spectrum rather than the higher.
- 4.5 A business representative organisation encouraged the CMA to more routinely undertake market studies to identify where problems are affecting micro-businesses, and take decisive enforcement action to address those problems.
- 4.6 A consumer organisation highlighted that demand-side remedies require proper testing, trialling and evaluation before they are finalised and rolled out.
- 4.7 The same organisation suggested that the CMA should evaluate whether the existing statutory timescales for market investigations are appropriate, and report to the government.

### **The CMA view**

- 4.8 The final version of the Plan clarifies the circumstances in which the CMA would not refer a merger for phase 2 investigation, even if it believes that it is or may be the case that the merger has resulted or may be expected to result in a substantial lessening of competition in a UK market.
- 4.9 The CMA is pleased that respondents support our planned work on PCWs and our increased focus on the public sector and its procurement strategy. These are areas which are highlighted in the government's 2015 Strategic

Steer to the CMA and in 'A better deal', which were published just before we consulted on our draft Annual Plan and to which we refer in both the draft and final Plans. The CMA has itself identified markets for public services as an area on which to focus, as the use of market mechanisms to provide services to citizens continues to expand into new areas. We welcome respondents' offers of support and agree that a partnership approach can be the most effective way to address market issues.

- 4.10 The CMA will have regard to levels of digital inclusion and consumer proficiency, including in the devolved nations, in its strategies and interventions in markets.
- 4.11 The CMA welcomes respondents' continued support for the concurrency arrangements, under which sector regulators are required to consider the use of competition powers as an alternative to regulation. This is particularly relevant where markets are evolving, with innovative disruptors taking advantage of technological developments to provide a competitive alternative to established business models.
- 4.12 We take an integrated approach to our work, selecting those tools we believe will achieve maximum positive impact for consumers and the UK economy. We will continue to take account of the potential for enforcement action in our consideration of potential markets projects and the scope of issues considered within each.
- 4.13 As a single organisation, the CMA is already capitalising on opportunities to design, implement and review remedies more efficiently and effectively than was the case for the Office of Fair Trading and the Competition Commission. We will also act on the recommendation by the National Audit Office, following its review of the UK competition regime,<sup>3</sup> to further develop our understanding of consumer behaviour to inform proposed remedies, including greater testing of remedies before implementation.
- 4.14 Following the conclusion of the energy and retail banking market investigations, the CMA will commence a review of how we conduct market investigations. This will allow us to identify opportunities to improve how we carry out these complex projects in the future.

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<sup>3</sup> National Audit Office (February 2016), [The UK competition regime](#).

## 5. Partnership and advocacy

- 5.1 Business representative organisations welcomed the CMA’s advocacy for effective competition to policymakers across government. One respondent highlighted that such advocacy should be proactive as well as reactive and a further respondent encouraged the CMA to regularly use its power to make recommendations to ministers.
- 5.2 The same organisation supported the CMA’s proposals for consumer engagement, but sought more information on the planned level of business engagement in the coming year.
- 5.3 Respondents welcomed the CMA’s focus on local, as well as central, government. A consumer organisation asked that the CMA reports a summary of all advice provided to government in its Annual Report, rather than just the number of advocacy projects undertaken. It also suggested that the CMA should publish all advice given to central and local government, as well as to other regulators and public bodies.
- 5.4 Several organisations with a Scottish remit highlighted that the CMA should set out how it will work with Scottish organisations, in particular on the Scottish government’s emerging consumer and competition plans.
- 5.5 A consumer organisation welcomed the CMA’s stated intention to apply a consumer lens to all of our work, but stated that the Plan should set out how the CMA will achieve these objectives and how it will measure whether it has been successful.
- 5.6 Respondents welcomed plans for the CMA to assess the direct financial benefits to consumers of the organisation’s work, but one respondent cautioned that the assessment must be sufficiently robust, demonstrably thorough, and peer-reviewed; any suspicion that the CMA has marked its own homework overly favourably would damage the reputation of the organisation and could delegitimise its interventions.
- 5.7 A consumer organisation urged the CMA to make public the assessments of concluded projects’ costs and benefits, and lessons learned.

### **The CMA view**

- 5.8 The CMA recognises and welcomes the important role we have in public and political discourse, and will continue to be a strong advocate for competition to ministers, policymakers and regulators.

- 5.9 The Small Business, Enterprise and Employment Act 2015 gave the CMA additional powers to make recommendations on emerging legislation. Under the same legislation, the government is expected to take those recommendations on board unless there are strong policy reasons not to do so. The CMA has used this power once,<sup>4</sup> on the draft Energy Bill, and will do so again as the need arises. Our proactive advocacy at the early stages of policy development seeks to prevent the need for us to intervene at the legislative stage, and we will continue to carry out our advocacy role both proactively and, where necessary, reactively.
- 5.10 The CMA welcomes the interest in our advocacy to government, and we already highlight details of some of this work in our Annual Report and Accounts. We also publish all formal recommendations that we make to government on legislation but do not consider it appropriate to publish details on all our advice to government, which can sometimes be more effective when given informally. We will explore what further detail we can provide in our next Annual Report and Accounts.
- 5.11 The CMA has an extensive programme of business engagement, which is highlighted in the final version of the Plan. The CMA engages with businesses directly, or through trade associations and representative organisations, and we welcome some respondents' offers to assist with such engagement and the promotion of compliance materials in the future.
- 5.12 In the past 12 months, CMA senior executives visited different parts of the UK to raise awareness of both the CMA, and of competition and consumer law amongst the business community across the UK, but most importantly to hear about the challenges businesses face and any experience they have of anti-competitive practices.
- 5.13 We have provided further detail in the Plan on how the CMA will work with the UK and Scottish governments as the devolution agenda evolves, including to help ensure the effective implementation of the new devolved competition and consumer powers.
- 5.14 The CMA applies its consumer lens at different stages throughout its projects. This is a series of important tests, to ensure that we are building and taking due account of a strong understanding of consumer issues and concerns across the entire range of our work. The tests help, for example, to ensure that we have accurately understood and, where possible, quantified the consumer harm arising from a particular market problem, and help to ensure

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<sup>4</sup> CMA (4 December 2015), [Energy Bill: CMA recommendations to ministers](#).

that we design remedies which will address the harm effectively. The application of the consumer lens will differ from project to project, so it is not appropriate to define publicly-stated objectives around its application. We have a range of measures for the effectiveness of our work, which include the target to achieve direct financial benefit to consumers of ten times our cost to the taxpayer. Last year we exceeded this target, achieving £11.20 of consumer benefit for every £1 spent on us, demonstrating the effectiveness by which we apply the consumer lens across all our cases.

- 5.15 This assessment of our impact is measured over a rolling three year period, as the ratio of direct financial benefits to consumers to costs of the CMA's principal tools. The methodology for this assessment is detailed in the CMA's annual impact assessment which is due for publication after the end of each financial year. The assessment is undertaken by the CMA itself and is reviewed by an external academic. For the 2014/15 assessment,<sup>5</sup> this was Professor Amelia Fletcher of the University of East Anglia.
- 5.16 The CMA already commits in its Annual Plan to publish independent evaluations of two of our concluded projects, and the published impact assessment report is based on projects' costs and benefits. The lessons we learn from each project will be evident through how we carry out future projects, as well through updates to our guidance and, where appropriate, in published speeches and articles.

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<sup>5</sup> CMA (21 July 2015), [CMA impact assessment 2014 to 2015](#).

## **6. Developing the CMA**

- 6.1 There were no comments received during consultation on this section of the draft Annual Plan.

## **7. Resources**

- 7.1 There were no comments received during consultation on this section of the draft Annual Plan.

## Appendix A: List of respondents

- Association of Chief Trading Standards Officers
- BGL Group Ltd
- British Chambers of Commerce
- Chartered Trading Standards Institute
- Consumer Council (Northern Ireland)
- Federation of Small Businesses
- Institute of Directors
- National Franchised Dealers Association
- National Trading Standards Board
- Northern Ireland Authority for Utility Regulation
- Society of Chief Officers of Trading Standards in Scotland
- The Independent Network of Estate Agents
- The Scottish government
- Which?

**Consultations and roundtables to consult on the Annual Plan were also held in Edinburgh, Belfast and Cardiff which were attended by the following:**

- Chartered Trading Standards Institute
- Citizens Advice Scotland
- CMS Cameron McKenna
- Consumer Insights Unit of Queen Margaret University Edinburgh
- Department of Enterprise, Trade and Investment (Northern Ireland)
- Glasgow University Law Dept
- Institute of Chartered Accountants in England and Wales – Wales

- Institute of Directors – Northern Ireland
- Law Society of Scotland
- Law Society of Northern Ireland
- Llywodraeth Cymru (Welsh government)
- MMS
- Ofcom – Scotland
- Ofgem – Scotland
- Sarah O’Neill (independent expert)
- Scottish Business Resilience Centre
- Scottish Legal Complaints Commission
- Scottish Retail Consortium
- Scottish Government
- Shepherd and Wedderburn
- Society of Chief Officers of Trading Standards in Scotland
- SRBC
- The Scotland Office
- Trading Standards Scotland
- Trading Standards Wales
- Welsh Local Government Association
- Welsh government – Department for Economy, Science and Transport