

# Competition and Markets Authority Annual Plan consultation 2021/22



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paragraph 13(2) of Schedule 4 to the  
Enterprise and Regulatory Reform Act 2013



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## Consultation information page

### Scope of this consultation

The consultation is intended to give interested parties the opportunity to provide views and comments on the CMA's proposed Annual Plan for 2021/22, which sets out the organisation's main themes for the year.

### Questions for the consultation

We hope that this draft Annual Plan gives you a clear indication of our proposed themes for the year ahead, and we look forward to receiving your feedback and suggestions.

We welcome views by email or using the [webform](#) on the consultation's webpage, ideally with reference to the following questions:

- Do you agree with the overall direction and themes of focus for the CMA set out in the 2021/22 draft Annual Plan?
- Are there any changes that you think we should make to our main themes for 2021/22?

### Duration

3 December 2020 to 5pm on 28 January 2021

### How to respond

When responding, please state whether you are responding as an individual or representing the views of an organisation. We ask that any comments be submitted in writing by email to [general.enquiries@cma.gov.uk](mailto:general.enquiries@cma.gov.uk) or via the [webform](#) on the consultation's webpage by 5pm on 28 January 2021 at the latest.

For enquiries, please email [general.enquiries@cma.gov.uk](mailto:general.enquiries@cma.gov.uk).

### After the consultation

We will consider all responses to the consultation and publish a summary of the responses to the consultation, along with a final version of the Annual Plan, by the end of March 2021.

### Compliance with the Cabinet Office Consultation Principles

This consultation is compliant with the latest Cabinet Office Consultation Principles. The Cabinet Office Consultation Principles criteria can be found at [www.gov.uk/government/publications/consultation-principles-guidance](http://www.gov.uk/government/publications/consultation-principles-guidance).

## **Data protection and confidentiality**

Please note that any personal data that you supply will be processed by us in line with data protection legislation.<sup>1</sup> We will only retain and use your personal data for the purposes of our work (to ensure that we take your response into account) and we will then securely delete it. We will not share your personal data with any third party.

For more information about how the CMA processes personal data, please see our [Privacy Notice](#).<sup>2</sup>

We will summarise all responses and publish this summary. It will include a list of organisations that responded, but not people's personal names, addresses, or other contact details.

Before publishing information, we will have regard to any restrictions placed on us by the law. If you consider that your response contains information which is commercially sensitive or confidential for some other reason, please identify it, mark it as commercially sensitive or confidential and explain why.<sup>3</sup>

Please note that information and personal data supplied to us in consultation responses may be the subject of requests by members of the public under the Freedom of Information Act 2000 (FOIA).<sup>4</sup>

## **Feedback about 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 send an email to:

[AnnualPlanConsultationFeedback@cma.gov.uk](mailto:AnnualPlanConsultationFeedback@cma.gov.uk)

Susan Oxley, Director of Strategy  
Competition and Markets Authority

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<sup>1</sup> In responding to the consultation, you will be supplying us with personal data (your email contact details, for example). Personal data is information which relates to a living individual who may be identifiable from it.

<sup>2</sup> It includes information about your rights in relation to your personal data, including how to contact us and how to complain.

<sup>3</sup> See [Transparency and Disclosure: Statement of the CMA's policy and approach \(CMA6\)](#).

<sup>4</sup> In responding to such requests, we will take into account any comments you have made about confidentiality. See also CMA6 (see footnote 3 above) about the CMA's approach to FOIA requests.

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## Foreword

During the past year, the CMA has had to reorient itself to protect consumers in the unprecedented circumstances of the coronavirus (COVID-19) pandemic. In the year ahead, we will face another major challenge, as we take on new responsibilities at the end of the EU Exit Transition Period. In all of this, the role of the CMA will remain crucial in ensuring that consumers get a good deal when buying goods and services and that businesses operate within the law.



The CMA has an important role to play in building trust and confidence when people buy goods and services, which will be critical to the economic recovery from the pandemic. The CMA has issued guidance on the kinds of cooperation that are acceptable to assist businesses seeking to address concerns arising from coronavirus. At the same time, we will remain alert to the risk of collusion, to mergers seeking to capitalise on the financial distress of businesses, and to attempts to exploit consumers and small and medium-sized enterprises (SMEs).

We are committed to quick, effective and high impact enforcement of competition and consumer protection law, during the pandemic and beyond. We have taken action, launching a rolling programme of work to ensure businesses adhere to the law, and securing millions of pounds of refunds for affected consumers. We will continue to monitor complaints and intelligence to ensure people's cancellation and refund rights are respected.

But even after the immediate crisis passes, it will have potentially wide-ranging and persistent effects on economic growth and productivity. Our role in restoring and



promoting competition and innovation, alongside effective consumer protection, is therefore critical to ensuring future growth in what will continue to be difficult conditions for many sectors of the economy. We will continue our work of advising government across the UK in designing and implementing policy for economic recovery in a way that harnesses competition (which spurs innovation and growth) and protects consumers' interests.

In undertaking this work, we would like to thank all of the staff at the CMA for their efforts to ensure our resilience in these exceptional times, including responding swiftly (through the COVID-19 Taskforce) to these challenges. Across the organisation as a whole, we continue to progress a large number of cases to successful outcomes and meet statutory deadlines.

The UK's exit from the European Union presents both challenges and opportunities for the CMA and for the UK's competition and consumer protection regimes. We

remain committed to making the most of these opportunities, while playing a bigger role internationally to promote competition and protect consumers.

We expect a significant increase in our caseload for merger control and competition law enforcement as we come to the end of the Transition Period. We have committed the necessary resources to ensure that we have the people, skills and infrastructure in place to deal with these complex and resource intensive merger, antitrust and cartel investigations. In anticipation of Parliament assigning the CMA a new role of monitoring the functioning of the UK Internal Market, we are starting to prepare for this new role.

These developments will have major implications for the work of the CMA and how it allocates its resources, and they may limit our discretion in the number of new projects we can launch this year.

In the current context, the CMA will continue to fulfil its duties, with a particular focus on the following themes:

- ❖ ***Protecting consumers and driving recovery during and after the coronavirus pandemic.*** We will do so with a particular focus on:
  - ***Protecting the vulnerable from breaches of competition and consumer protection laws and poorly functioning markets***
  - ***Supporting the UK economy by fostering competition to promote innovation, productivity and growth***
- ❖ ***Taking our place as a global competition and consumer protection authority as we assume our new responsibilities after the EU Exit Transition Period***
- ❖ ***Fostering effective competition in digital markets***
- ❖ ***Supporting the transition to a low carbon economy***



In early 2020, the CMA was asked by the UK Government to assess the state of competition in the UK. This report was published on 30 November and we will take into account its initial findings, which give us insights into the level and nature of competition across the economy and within a number of sectors.



**Digital  
markets  
taskforce**

We need to ensure that the many benefits of digitalisation for consumers are secured, while making sure that concerns are properly addressed. We welcome the UK Government's response to our online platforms and digital advertising market study, committing to introduce a new pro-competitive regulatory regime. The Government also outlined that a new 'Digital Markets Unit' will be established within the CMA in 2021/22. The CMA's Digital Markets Taskforce is due to advise Government on the design of the new regulatory regime by the end of the year. It will then be for the Government to take action and bring forward legislation to establish the regime. The CMA's work in this area has already been influential in shaping discussions and policy-making in the UK and more widely.

In carrying out all of our work, we will seek to get closer to the needs of consumers, as we set out at the beginning of 2020. We are committed to doing more to understand the issues facing consumers, in particular those who are vulnerable, for whatever reason; to explain our decision-making; and to be a more visible and vocal advocate for consumers. As part of these initiatives, the CMA will be increasing its engagement with consumer and business groups and other stakeholders on a regional, as well as national, basis to understand the differing experiences and challenges facing businesses and consumers.

Although we are doing all that we can within our existing powers, we believe that legislative reform is necessary to bring about stronger, swifter and more flexible competition and consumer protection regimes. We have proposed reforms, setting out a clear framework of duties for the CMA, including a duty to conduct its work as swiftly as possible, backed by new and improved powers to deliver that. We are also liaising with John Penrose MP on his review of the competition and consumer regime that was commissioned by the UK Government.

The thinking behind our reform proposals is that the system needs to be adapted to meet new challenges that are fundamentally changing the environment in which we operate. One of these challenges is the accelerating digitalisation of the economy. Another challenge underlying our reform proposals is the concern, felt by many, that the UK's competition and consumer protection system is currently too weak, and too cumbersome and slow, to tackle consumer harms effectively.

Despite the challenges we are all facing now – indeed, in some ways, because of them – we are determined to continue delivering significant benefits to consumers, businesses and the wider economy. In doing so, we will seek to provide excellent value for money for the taxpayers who fund us, both directly as seen by our cost/benefit calculations and indirectly, through our much wider impact on productivity and growth.



Jonathan Scott  
Chair



Andrea Coscelli  
Chief Executive

## 1. About the CMA

- 1.1. The CMA is an independent non-Ministerial Government Department and is the UK's principal competition and consumer protection authority. We work to ensure that consumers get a good deal when buying goods and services, and that businesses operate within the law. Our statutory duty is to promote competition, both within and outside the UK, for the benefit of consumers, and our mission is to make markets work well in the interests of consumers, businesses and the economy.
- 1.2. We derive our powers from the Enterprise and Regulatory Reform Act 2013 and our work is overseen by a Board and led by the Chief Executive and senior team. Decisions in some investigations are made by independent members of the CMA Panel.
- 1.3. Our functions include:
  - Investigating mergers that have the potential to lead to a substantial lessening of competition. If a merger stands to reduce competition, the CMA can block it or impose remedies to address such concerns;
  - Conducting studies, investigations or other pieces of work into particular markets where there are suspected competition and consumer problems. The CMA can take action – and recommend action be taken by others – in markets where competition may not be working well;
  - Investigating businesses and individuals to determine whether they have breached UK competition law and, if so, to end and deter such breaches, and pursue individuals who commit the criminal cartel offence;
  - Enforcing a range of consumer protection legislation, tackling issues which suggest a systemic market problem, or which affect consumers' ability to make choices;
  - Promoting stronger competition in the regulated industries (gas, electricity, water, aviation, rail, communications and health), working with the sector regulators;
  - Conducting regulatory appeals and references in relation to price controls, terms of licences or other regulatory arrangements under sector-specific legislation;
  - Giving information or advice in respect of matters relating to any of the CMA's functions to the public, policy makers and to Ministers about

how they can design and implement policy in a way that harnesses the benefits of competition, and protects and promotes the interests of consumers.

- 1.4. We adopt an integrated approach to our work, selecting those tools we believe will achieve maximum positive impact for consumers and the UK economy.
- 1.5. We have a UK-wide remit. As well as our London office, where most of our staff are based, we now have a significant presence in Scotland as well as offices in Northern Ireland and Wales.
- 1.6. The CMA is committed to being a great place to work. We want our staff to work in an organisation that is continually learning and improving, providing them with an excellent work life experience. Our People Strategy ensures delivery of that ambition.
- 1.7. In response to feedback received through the annual staff survey, our focus for 2020 and 2021 is on three themes:
  - *Career progression*: the CMA is committed to developing every member of our staff. It is also our continued ambition that the workforce of the CMA is representative of the consumers that we serve. We recognise that to support this aim there is more that we need to do to support the career progression of under-represented groups.
  - *Respect*: We are committed to treating everyone with respect and to ensuring our workplace is free of bullying and harassment. We will encourage and enable our colleagues to do their best, acknowledge and value diversity, and listen to different views with courtesy.
  - *Health and wellbeing with resilience*: We continue to work on creating a culture of wellbeing and promoting positive mental health at work. On 18 May 2020 we signed up to the Mental Health at Work Commitment, the aim of which is to promote and share best practice among employers, based on up-to-date research, that clearly set out expectations that employers need to meet.<sup>5</sup> We will test our progress with the Commitment by undertaking an external assessment with MIND Wellbeing Index in January 2021.
- 1.8. The CMA goes beyond the minimum requirements of equality legislation. We have a four-year equality, diversity and inclusion strategy, supported by an initial two-year action plan to ensure delivery of the strategy. This year

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<sup>5</sup> The Mental Health at Work Commitment involves the cooperation of UK businesses and organisations and mental health charities and non-governmental organisations. The standards build on those published in the independent Government-commissioned Thriving at Work review.

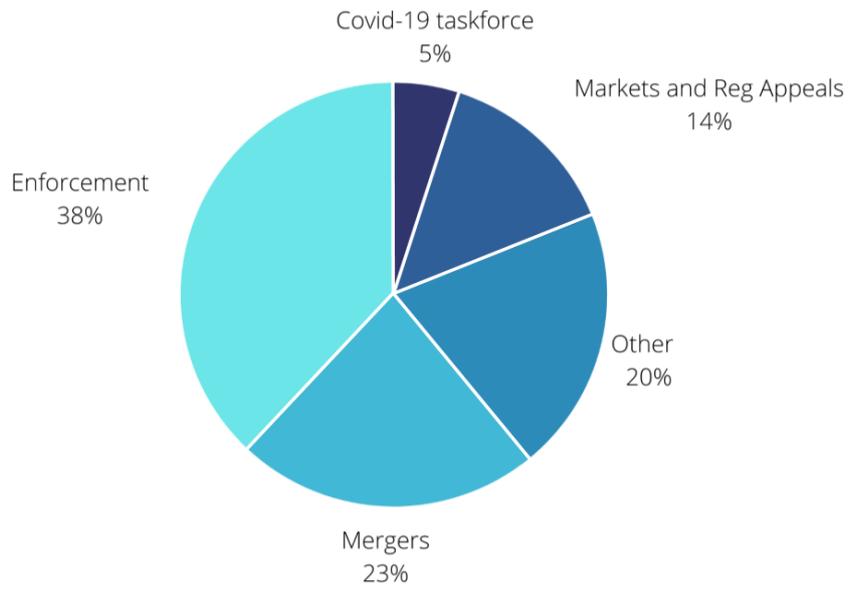
we are also particularly focusing on the issue of race and implementing a range of initiatives to our Race Action Plan, including:

- educating ourselves about the barriers and challenges facing colleagues from ethnic minority communities, both inside and outside the CMA;
- removing barriers to career progression for colleagues from ethnic minority communities;
- addressing the lack of ethnic diversity in our senior leadership; and
- ensuring the CMA's diversity at all levels reflects that of the UK public.

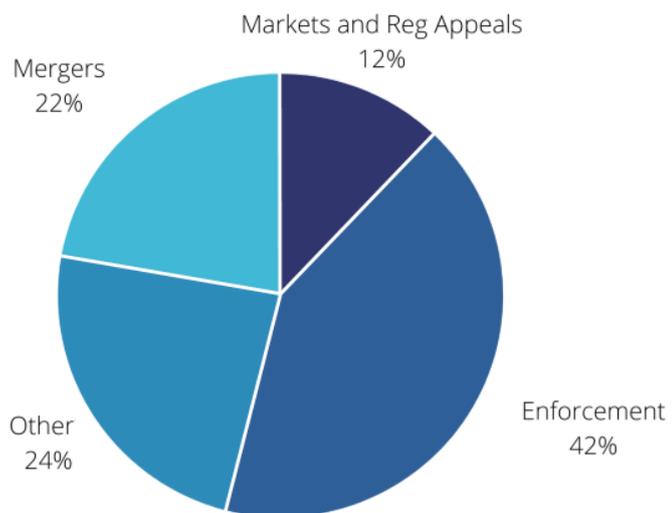
### **Overview of the CMA's recent and ongoing activity**

- 1.9. We will enter 2021/22 with a substantial volume of ongoing work and at the time of publication have ten competition enforcement cases, ten consumer enforcement cases, 22 merger investigations (including three Phase 2 reviews), one market investigation, one market study (which was recently launched), and one regulatory appeal under way. In addition, 14 of our projects are currently subject to litigation. All our cases can be found at [www.gov.uk/cma-cases](http://www.gov.uk/cma-cases).
- 1.10. The chart below illustrates how CMA staff time has been split across different types of work over the past two years.
- 1.11. The chart for the period October 2019 to September 2020 shows the resource allocated to the Covid-19 Taskforce in response to the pandemic. It also shows an increase in the proportion of resources allocated to Mergers and Regulatory Appeals. The 'Other' category includes the following project areas: Policy and International, Advocacy and Pipeline, as well as our work on the Digital Markets Taskforce and state of competition projects.

### Distribution of staff time Oct 2019 – Sep 2020



### Distribution of staff time Oct 2018 – Sep 2019



## 2. Our main themes for 2021/22

- 2.1. Competition is good for consumers and good for business, and it also brings wider economic benefits. It helps ensure that people get a greater choice of better products and services at lower prices. It rewards those businesses which invest in the development of new and improved products to meet people's needs. It spurs businesses to seek more cost-effective ways of making and selling those products, so boosting productivity.
- 2.2. It is also important that consumers are well-informed, active and able to shop around to find the best deals. This drives companies to seek to win business by competing on range, quality, price and innovation.
- 2.3. We recognise that it can be confusing and time-consuming for consumers to shop around and that the practices of some suppliers can exacerbate these problems in some markets. The most vulnerable in our society can have even greater challenges engaging in markets, such as those on low incomes, people who struggle to use online services, or people with poor mental health who may avoid or fear change.
- 2.4. We want to ensure that as consumers we get more of what we want at the best possible price, while improving productivity and facilitating growth, job creation and better living standards in the economy as a whole.
- 2.5. The CMA intervenes where necessary to protect competition or when it believes it can improve the way in which markets work. The CMA's interventions therefore seek to promote open competition and to encourage greater availability of products and services. The provision of accurate, non-deceptive information between businesses and consumers is crucial to underpinning consumer trust. Where that is not possible or sufficient, our experience shows that different interventions may be necessary, for instance remedies which actively help consumers to interact in markets or shop around.
- 2.6. We are committed to ensuring that we deliver significant positive outcomes for consumers, businesses and the economy using the full range of our existing toolkit. We will continue to enforce competition and consumer law; and carry out merger investigations and our markets work. We will also continue our work of advising government and public authorities across the UK in designing and implementing policy for economic recovery in a way that harnesses and improves competition, and protects the interests of consumers. This is crucial at a time when government will be very active, intervening in markets in new ways, at pace, to address some of the effects of the pandemic and stimulate the re-development of different sectors.

- 2.7. We will maintain our work in relation to small and medium-sized enterprises and micro businesses, which play an essential role in economic growth and have been particularly affected by the coronavirus pandemic, as they can also be the victims of anti-competitive practices.
- 2.8. Some of the CMA's work, such as merger control, is 'non-discretionary': it must be carried out irrespective of the wider context in which the CMA operates; and there are statutory deadlines which apply. We have more discretion with our other work and the CMA must decide how to prioritise this in a way that best delivers on its statutory duty to promote competition for the benefit of consumers.
- 2.9. Our ability to launch major new discretionary projects over the coming year may be more limited than in the past. However, we have prepared well to ensure that we are ready to take on new post-EU Exit responsibilities from January 2021, while maintaining other functions. We have recruited many new staff to help us take on our expanded role and will continue to do so in the period ahead. This includes continuing to recruit expertise to our Edinburgh, Cardiff and Belfast offices that will help equip us with greater knowledge of priorities in the different nations of the UK.
- 2.10. Although the external challenges described above will constrain our flexibility in what we can deliver this year, we will continue to focus on issues that really matter to UK consumers, ensuring that our work is directly relevant to people's everyday lives and that we further cement the CMA's place at the heart of UK economic life. The draft Annual Plan sets out our proposed themes for this year and invites your views.

2.11. In this context, the CMA will continue to promote competition and protect consumers. When exercising its functions, it proposes to have a particular focus on the following themes:

- ❖ Protecting consumers and driving recovery during and after the coronavirus pandemic. We will do so with a particular focus on:
  - Protecting the vulnerable from breaches of competition and consumer protection laws and poorly functioning markets
  - Supporting the UK economy by fostering competition to promote innovation, productivity and growth
- ❖ Taking our place as a global competition and consumer protection authority as we assume our new responsibilities after the EU Exit Transition Period
- ❖ Fostering effective competition in digital markets
- ❖ Supporting the transition to a low carbon economy



## ***Protecting consumers and driving recovery during and after the coronavirus pandemic***



2.12. The CMA's work will focus on supporting the UK economy by fostering competition and consumer protection to promote innovation, productivity and growth, as the UK emerges from the pandemic. The CMA will secure this by:

- punishing and deterring anyone attempting to fix prices, exploit their market power or dampen competition and by remedying or prohibiting anti-competitive mergers;
- enforcing consumer protection law, so that people feel confident to go out and spend money in the knowledge they are protected from unfair trading;
- putting forward measures to encourage competition on price, innovation and quality in markets that are not working in the interests of consumers; and
- helping governments design and implement policy in a way that harnesses the benefits of competition, and protects and promotes the interests of consumers.

### ***Protecting the vulnerable from breaches of competition and consumer protection laws and poorly functioning markets***

2.13. Helping vulnerable consumers is central to the CMA's mission. We can all be vulnerable in certain contexts: for example, if we need to make a purchase at a stressful time. Some of us will experience vulnerability during particularly difficult periods of our lives (eg bereavement and sudden unemployment), whereas for others vulnerability derives from longer term challenges, such as physical disabilities, protracted periods of mental health issues, or being on a low income.

2.14. The ongoing coronavirus pandemic, and its aftermath, could lead to a rise in the number of consumers vulnerable to some form of exploitation. Higher levels of household debt, lower incomes and increases in unemployment may all limit the choices available to some consumers, leaving them exposed to less scrupulous traders. Moreover, the pandemic could exacerbate the challenges already faced by some vulnerable consumers, such as older people, those suffering from mental health problems, those

impacted by a life event (eg serious illness), or those who do not have internet access.

- 2.15. In addition, the crisis has opened up new opportunities for unfair practices and anti-competitive conduct to take root. The CMA's COVID-19 Taskforce has received large numbers of complaints about the failure to respect consumers' refund rights when travel bookings, holiday accommodation and other services are cancelled, and about price gouging of essential items.<sup>6</sup> The harmful effects of these practices are likely to be felt particularly acutely by vulnerable consumers, who may be less able to afford the higher prices and may be less able to go to a different shop, or to go online, to get a better deal. Moreover, vulnerable consumers may have a greater need for the immediate return of their money, or may be less able to fight for a refund, if it is not immediately forthcoming.
- 2.16. We will continue to respond swiftly to unscrupulous and harmful practices we observe during the pandemic. We have been able to secure significant refunds for customers regarding cancellations, including by businesses in these sectors: package travel, holiday lettings and weddings. We also published a general statement on our view of the law in respect of cancellation and refunds along with statements relating to specific sectors (eg weddings, and the nursery and early years sectors) to help consumers understand their rights and to help businesses treat their customers fairly. We have also written to businesses in various sectors to advise them that we expect compliance with the law and appropriate refunds to be provided to customers.
- 2.17. Over the longer term, if more economic activity takes place online, it will add to the vulnerability already faced by those who do not have internet access, or who are unable easily to shop around online or do so confidently.
- 2.18. We remain of the view that stronger consumer protection law and stronger powers for the CMA – including the introduction of administrative decision-making and fining powers for civil infringements – would help to prevent and address more effectively some of the harmful practices that might arise as the economy recovers and adapts.
- 2.19. In addition to the work we are undertaking as a direct response to the coronavirus pandemic, we will continue to pursue other important consumer protection enforcement cases, including in relation to fake and misleading

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<sup>6</sup> The CMA has published analyses of the complaints received and its response to them. Update on the work of the CMA's Taskforce - GOV.UK ([www.gov.uk](http://www.gov.uk)).

online reviews, care homes, leasehold housing, and the development of consumer law guidance for IVF clinics.

- 2.20. Based on our experience from the Citizens Advice super-complaint on loyalty penalty charges, we know that targeted interventions for certain groups of consumers, such as vulnerable consumers, may be needed in some markets. This includes remedies which actively help consumers, for example to interact in markets, shop around and/or make the process of switching easier.
- 2.21. We remain committed to making sure that the issues identified in the Citizens Advice super-complaint on loyalty penalty charges are effectively tackled. We published a [further update in December 2020](#) welcoming the progress made in the five markets identified, with Ofcom and the Financial Conduct Authority introducing interventions, most recently in broadband, and general insurance. We will continue to work with Government and regulators on this important issue, including exploring how our powers can be strengthened and consumer law clarified further, to ensure we can take action more effectively to help protect consumers from this and other exploitative problems.
- 2.22. The CMA is pursuing investigations in two sectors, online video gaming and anti-virus software, that will address issues closely connected with loyalty penalties, including matters relating to the fair provision of automatically renewing contracts.
- 2.23. Within our portfolio of competition enforcement cases we will continue our work on cases in the UK pharmaceutical sector, to ensure that the NHS does not pay significantly more than it should for essential medicines and treatments, and that consumers who depend upon these drugs and treatments do not lose out. Recently, our actions have resulted in money being paid directly to the NHS to compensate it for the effects of anticompetitive conduct.
- 2.24. Our mergers work also covers markets that impact vulnerable consumers. Cases in the past year include the final implementation of the sale of Smartbox by Tobii after the CMA found that the merger could lead to a reduction in the range of products available and higher prices. They are both providers of assistive communication products which are bought for those who need them by the NHS, charities and schools. We also investigated and cleared the purchase of gene therapy provider Spark by Roche, the pharmaceuticals company. Spark provides treatments for patients with haemophilia. The investigation found that the health service

and patients would still have access to alternative treatments after the merger.

- 2.25. As part of our CMA 2020s initiatives, discussed below, we will focus on getting a better understanding of how markets are changing, including as a result of the coronavirus pandemic, and how this will affect competition and consumers. The CMA is extending its outreach to people and businesses across the nations and regions of the UK, particularly with third sector bodies (eg charities, representative groups, children's and older persons' commissioners) as well as trade associations and business groups. This new and targeted engagement is aimed at deepening our understanding of nuances across sectors and geographies and may flag additional issues that could be considered by the CMA's pipeline for future projects.
- 2.26. We also launched our Behavioural Hub in March 2020 to improve our understanding of consumers' needs as well as how businesses design and target their products and services. This will help us to identify and diagnose problems more fully and to shape more robust remedies better suited to tackling the issues faced by consumers. These behavioural insight specialists will continue to work closely with our consumer, markets, and remedies teams; including with the aim of furthering our knowledge of consumer vulnerability, and potential measures to alleviate it.

*Supporting the UK economy by fostering competition to promote innovation, productivity and growth*

- 2.27. The recession and the economic adjustment to the pandemic create a number of risks to competition. Businesses are likely to fail at a higher rate as the economy goes through a recession and adjusts to a new normal in which consumer preferences may have changed, and in which public health measures require businesses to operate differently. These same pressures may also prompt more businesses to merge, or to be acquired by stronger competitors. There may also be a risk of cartelisation in some sectors. Meanwhile, global trade has contracted. All of these factors tend to reduce competitive pressures in the economy, with adverse consequences for consumers, businesses and the wider economy.
- 2.28. The CMA will not tolerate conduct which seeks to exploit the crisis to the detriment of consumers. Faced with businesses weakened by the recession, it is even more important for the CMA to carefully assess mergers which could weaken competition, raising prices and reducing quality, innovation and choice, and to remain vigilant to possible breaches of competition and consumer law. We will clamp down on cartels and collusive behaviour which seek to keep prices up.

- 2.29. We will use our powers to promote competition and individual compliance with the law. We will continue to issue statements to inform businesses about how to ensure they comply with the law. We will investigate possible breaches of the law and impose fines on businesses that break the law. We will continue to use our powers to impose administrative penalties when businesses fail to comply with legal requirements to provide the requested information.
- 2.30. We will ensure individual accountability for wrongdoing, through our use of director disqualification in competition enforcement cases. Having ramped up our use of the powers in late 2016, we have now secured 20 director disqualifications arising out of CMA investigations.<sup>7</sup> In one contested case before the court in July 2020, the court ordered that the director of a company involved in an arrangement between local estate agents to fix commission fees be disqualified from holding any UK company directorship for a period of 7 years. The CMA is also empowered to investigate and prosecute individuals under the criminal cartel offence. We remain committed to using these powers, wherever appropriate.
- 2.31. The recession, recovery and adaptation of the economy to the coronavirus pandemic are likely to have a number of consequences for markets. These effects, and how they are managed, will matter not just for consumer outcomes, but also for the post-pandemic recovery, and in particular, long-term productivity and economic resilience.<sup>8</sup> Our Advocacy team will continue to advise governments in designing policy for economic recovery in a way that supports competition and protects the interests of consumers.
- 2.32. The CMA will continue to provide a swift response to tackle challenges during and after the pandemic. We will monitor changes to the dynamics in markets and keep a focus on small and medium-sized businesses, which have been particularly impacted by the coronavirus pandemic and are often not much better off than individuals in dealing with big, powerful companies.
- 2.33. Early in the pandemic, most of the complaints we received were about increased prices for essential products, but since April 2020 the majority have been about unfair practices in relation to refunds for cancelled services (particularly travel and holiday accommodation).<sup>9</sup> The CMA has an important role to play in helping sectors affected by the pandemic rebuild consumer trust. The CMA will do so by working closely with sectors to

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<sup>7</sup> This includes a company director being disqualified by the Court from acting as a company director for 7 years, under the criminal cartel offence (section 188 of the Enterprise Act 2002).

<sup>8</sup> Written submission by the CMA to the Business, Energy and Industrial Strategy Select Committee inquiry on Post-pandemic economic growth (PEG0315), October 2020.

<sup>9</sup> The CMA has published analyses of the complaints received and its response to them. [Update on the work of the CMA's Taskforce - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/534247/Update_on_the_work_of_the_CMA_s_Taskforce_-_GOV.UK.pdf).

ensure all businesses use fair terms and fair commercial practices, and also ensuring effective enforcement against those suppliers who do not adhere to the law.

- 2.34. The CMA introduced guidance on co-operation between businesses to ensure security of supply during the pandemic, making it clear that we will not take action against cooperation provided that it is necessary and proportionate to secure supply chains. The guidance is also clear that we will not tolerate attempts to go beyond this by exploiting the situation to the detriment of consumers and business customers.<sup>10</sup>
- 2.35. In early 2019 we launched the CMA's Data, Technology and Analytics (DaTA) unit, which has capabilities in data science and data engineering, as well as behavioural science and data and technology insights expertise. Part of their remit is to enhance and make more efficient data gathering and analysis for case teams across the organisation. We made significant use of this team in the COVID-19 Taskforce in creating the data pipeline to handle and analyse the over 100,000 complaints we received carefully and systematically. They are also significantly improving our capability to ingest data into the organisation in a variety of ways.
- 2.36. It is important that we maintain the delivery and pace of our projects during and after the pandemic, making the best use of our resources. We are further refining our procedures and guidance to improve the way we work and our interaction with parties to our investigations.

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<sup>10</sup> [CMA approach to business cooperation in response to COVID-19. \(CMA118\).](#)

***Taking our place as a global competition and consumer protection authority as we assume our new responsibilities after the EU Exit Transition Period***



- 2.37. Over the past couple of years, we have committed the necessary resources to ensure that we have the necessary people, skills and infrastructure in place to take on our expanded role outside the EU. This is with a view to tackling challenges that transcend borders in order to protect consumers within and outside the UK.
- 2.38. We are ready to launch complex cartel and antitrust cases and merger investigations with a global dimension that would have previously been reserved to the European Commission. We have engaged in pre-notification discussions with parties from early autumn 2020. We already have experience of working with other competition authorities on cases with a potential impact on UK consumers. Recent examples include the investigation of the Atlantic Joint Business Agreement between American Airlines, members of International Consolidated Airlines Group and Finnair, as well as the Sabre/Farelogix airline booking merger which the CMA investigated alongside the US Department of Justice before blocking it. The CMA worked alongside other national competition authorities on the Prosafe/Floatel and McGraw Hill/Cengage mergers, both of which were abandoned.
- 2.39. Markets are increasingly global and the growth of digital ways of doing business means that different jurisdictions face many of the same challenges. Moreover, many issues cannot be fully addressed in isolation, but benefit from concerted action. We will continue our close engagement and cooperation with other competition and consumer agencies in the EU and globally. The CMA recently signed a new agreement with five of its international counterpart competition authorities to improve co-operation on investigations. The Multilateral Mutual Assistance and Cooperation Framework for Competition Authorities was also signed by the Australian Competition and Consumer Commission, the New Zealand Commerce Commission, Competition Bureau Canada, the United States Department of Justice and the United States Federal Trade Commission as a statement of our collective intent to deepen cooperation on competition enforcement.
- 2.40. In addition, we will remain active and committed participants in important forums like the Organisation for Economic Co-operation and Development, the International Competition Network, the International Consumer

Protection and Enforcement Network and the United Nations Conference on Trade and Development.

- 2.41. Strong, independent competition and consumer protection law enforcement also has an important part to play in international trade agreements that the UK may enter into, ensuring that businesses from both parties can compete fairly to the benefit of consumers. We will continue to work closely with government as they put new strong trade relationships in place with key partners.
- 2.42. We have published guidance on the CMA's functions after the end of the Transition Period.<sup>11</sup> We remain open and ready to speak to businesses, consumers and consumer groups and other interested parties who may have more specific queries or concerns.

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<sup>11</sup> Guidance on the functions of the CMA after the end of the Transition Period, (CMA125).

## ***Fostering effective competition in digital markets***



- 2.43. Competition spurs innovation, which is crucial in driving improvements in productivity and growth. Digital markets are widely recognised as being one of the most dynamic and innovative areas of most economies, with huge potential for value creation. It is imperative that we ensure that these markets operate in a way that fosters innovation and growth, and that we remain vigilant to the risk of harm to consumers.
- 2.44. In line with our Digital Markets Strategy, we will continue to use our tools effectively and efficiently, considering how best to target our enforcement action, market studies, and merger assessment to digital markets.<sup>12</sup> The CMA has already carried out a significant body of work in these markets. This includes assessing various mergers involving digital companies, including Amazon/Deliveroo and Google/Looker, conducting market studies - such as on digital comparison tools and online platforms and digital advertising - and enforcing competition and consumer law in numerous sectors. To date this has included industries as varied as online sales of musical instruments, online restaurant platforms, online convenience grocery platforms, online reviews, price comparison websites (including the impact that some clauses can have on prices), hotel booking websites, cloud storage, social media influencers (including Instagram agreeing to tackle hidden advertising) and online gambling.
- 2.45. We will also continue to support the UK Government's work towards regulation in digital markets. The UK Government accepted our key recommendation arising from our market study into online platforms and digital advertising,<sup>13</sup> committing to introducing a new regulatory regime to ensure that these markets continue to deliver benefits to consumers, businesses and the economy as a whole.<sup>14</sup> The Government also outlined that the Digital Markets Unit will be established within the CMA in 2021/22 to enable the CMA to begin work to put into operation key elements of the regime.
- 2.46. As the Furman Review<sup>15</sup> had done previously, we recommended that the Digital Markets Unit should be given the ability to enforce a code of conduct

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<sup>12</sup> Competition and Markets Authority's digital markets strategy - GOV.UK ([www.gov.uk](http://www.gov.uk)).

<sup>13</sup> Online platforms and digital advertising market study - GOV.UK ([www.gov.uk](http://www.gov.uk))

<sup>14</sup> [Government response to the CMA digital advertising market study - GOV.UK \(www.gov.uk\)](http://www.gov.uk).

<sup>15</sup> [Unlocking digital competition, Report of the Digital Competition Expert Panel - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

to ensure that platforms with ‘Strategic Market Status’<sup>16</sup> do not engage in exploitative or exclusionary practices, or practices likely to reduce trust and transparency. The Digital Markets Unit should also have the ability to impose ‘pro-competition interventions’ to drive greater competition and innovation in digital markets.

- 2.47. The CMA is now building on these recommendations in its work leading a Digital Markets Taskforce,<sup>17</sup> which was commissioned by the UK government earlier this year to provide advice on the design and implementation of pro-competition measures for digital markets. As part of our advice we are also considering a parallel merger regime for acquisitions by companies with Strategic Market Status. It will then be for the Government to take action and bring forward legislation to establish the regime.
- 2.48. The DaTA unit is assessing the skills and capability required to monitor digital markets. It already provides technological expertise to collect and analyse large, complex and rich datasets, to understand better the technologies used by companies, and to challenge them on technical grounds where necessary including applying behavioural science to understand the interaction of consumers with digital markets and platforms. It is contributing to the creation of technology remedies, such as interoperability or techniques for anonymous data sharing. It is also helping us to understand the data and analytical skills, and powers, that would be needed for the CMA and for a Digital Markets Unit.
- 2.49. Much of our consumer protection enforcement has been focused on digital markets. The growth of online shopping during the coronavirus pandemic, which is likely to strengthen the position of online retail platforms, could increase the need for further enforcement activity.
- 2.50. Alongside the many benefits digital markets offer, they can also expose consumers to experience a range of harms. To ensure the CMA is at the forefront of understanding these harms, we will publish a paper in relation to how consumers are presented with choices online and the related behavioural science, and highlight gaps in our knowledge where we would like to see more research done.
- 2.51. The DaTA unit is also scrutinising how digital businesses use algorithms and how this could negatively impact competition and consumers. We plan to publish a paper on potential harms arising from algorithms and to invite

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<sup>16</sup> Those in a position to exercise market power over a gateway or bottleneck in a digital market, where they control others’ market access. See [Unlocking digital competition, Report of the Digital Competition Expert Panel - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/614221/Unlocking_digital_competition_Report_of_the_Digital_Competition_Expert_Panel_-_GOV.UK_(www.gov.uk).pdf)

<sup>17</sup> Digital Markets Taskforce - GOV.UK (www.gov.uk)

collaboration with companies, researchers and stakeholders on methods for authorities to investigate, mitigate, and remedy any harms. As part of this work we will be considering how requirements for auditability and explainability of algorithms might work in practice.

- 2.52. We recognise that digital markets are increasingly interconnected – action in relation to competition increasingly has consequences for work in relation to privacy, online harms, intellectual property and consumer protection. We will need to work more closely with our partners in other agencies – both domestically and internationally – to tackle these problems together. This is something we are already doing in the UK, where the CMA is working with Ofcom (our communications regulator) and the Information Commissioner’s Office (our privacy regulator) through the Digital Regulation Cooperation Forum to support regulatory coordination in digital markets in the UK. This forum aims to harness our collective expertise when data, privacy, competition, communications and content interact.
- 2.53. Given the global nature of the issues related to digital markets, we will continue our efforts towards international cooperation and collaboration, also with a view to foster coherence and consistency in approaches to prevent a fragmented regulatory landscape.

## ***Climate change - supporting the transition to a low carbon economy***



- 2.54. Concerns about climate change are changing market dynamics and consumer behaviours across the UK economy. The UK committed to a legally binding target of net zero emissions by 2050;<sup>18</sup> and clean growth is crucial to achieving this goal. This includes plans to cut emissions in heavy industry and promote green recovery.
- 2.55. We are continuing to develop capability to ensure that when delivering our statutory functions, we act in a way which supports the transition to a low carbon economy.
- 2.56. We have launched a project looking at suppliers' use of environmentally friendly claims (so-called 'green claims'). This involves engaging with a wide set of stakeholders to improve our understanding of the claims suppliers make about green/environmental benefits associated with their products and how consumers respond to such claims. We plan to issue guidelines for businesses regarding the use of green claims and the provision of environmental information, with a view to preventing misleading claims which could erode consumers' trust. We are also co-leading with the Dutch Authority for Consumers and Markets an International Consumer Protection and Enforcement Network project on misleading green claims.
- 2.57. We recognise the importance of cooperating with stakeholders within the UK and internationally and will continue to contribute to the international discussions on the role of competition and consumer law in supporting the low carbon economy. Moreover, the CMA's outreach programme to the third sector will facilitate a dialogue on the relationship between competition policy and sustainability.
- 2.58. We have actively engaged with a wide range of stakeholders, including businesses, non-governmental organisations (NGOs) and other competition authorities to develop our understanding of what could prevent businesses and NGOs from engaging in sustainability agreements. As an interim step, we are working on high level materials to help them navigate the existing framework. We are also looking at any substantive issues with the way we currently apply competition law and possible solutions to ensure that

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<sup>18</sup> UK becomes first major economy to pass net zero emissions law - GOV.UK ([www.gov.uk](http://www.gov.uk)). Scotland set a target for net-zero emissions of all greenhouse gases by 2045, Climate change - gov.scot ([www.gov.scot](http://www.gov.scot))

competition law does not act as an unnecessary obstacle to sustainability agreements.

- 2.59. We will continue to consider how our existing tools can help businesses. We will communicate better to ensure that businesses engaged in sustainability initiatives know how to comply with competition and consumer law and do not unnecessarily shy away from those initiatives on the basis of unfounded fears of being in breach of the law. We will also work with central and devolved governments to ensure that climate change policy is capitalising on the benefits of competition. We also plan to examine how consumer law applies to digital and technical obsolescence.
- 2.60. We will continue to support businesses in adapting to climate change while ensuring that markets remain competitive and open to disruptive innovation and have launched a [market study into electric vehicle charging in the UK](#).
- 2.61. We will continue to provide advice and support to central, devolved and local governments on the impact of climate change and sustainability policies on competition and consumers. We will build on our engagement with government to date on recycling, emission zones and public transport.

### 3. The CMA in the 2020s

- 3.1. At the beginning of 2020 our Chief Executive, Andrea Coscelli, our outgoing Chair, Andrew Tyrie, and one of our Non-Executive Directors, Bill Kovacic, set out our ambition to bring the CMA closer to consumers and their needs.<sup>19</sup>

#### 1. Understand markets and consumers better

- 3.2. We will continue to develop our understanding of the changing needs of consumers and how they experience markets, including through:

- the work of our Behavioural Hub and Data Technology Insight team, and by commissioning research into public understanding of consumer law issues;
- examining and reporting on the state of competition across the economy. We published our report on 30 November 2020;<sup>20</sup> and
- extending our outreach to people, businesses and third sector bodies across the nations and regions of the UK, and using the intelligence gained from these interactions to inform our work.

#### 2. Explain why competition matters, and the CMA's work and priorities

- 3.3. We will work to improve awareness of how well-functioning, competitive markets serve consumers, businesses and the wider economy. We will do more to explain how the CMA's work supports this objective, and the rationale for our priorities, plans, and selection of projects. And we will work with the business community to explain the importance of competition law, and how to comply with it.
- 3.4. Through this process of explanation – which will involve engagement with stakeholders across the UK, including in the Devolved Nations – we hope to improve awareness and compliance with competition and consumer law; to build understanding of the CMA's role; and to obtain input into how our work can serve society better.
- 3.5. Using a wider range of tools and channels (eg video content and social media), we will seek to broaden the audience for our messages. We will

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<sup>19</sup> [Andrea Coscelli: closer to consumers – competition and consumer protection for the 2020s - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/andrea-coscelli-closer-to-consumers-competition-and-consumer-protection-for-the-2020s).

<sup>20</sup> [CMA reports on the state of competition in the UK - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/cma-reports-on-the-state-of-competition-in-the-uk).

also hold more stakeholder events, albeit that these are likely to be virtual rather than physical given current public health constraints.

### **3. Advocate for consumers' interests**

3.6. Through its own work and interventions, the CMA promotes competition in the consumer interest. The CMA also has a function to make recommendations and give advice to government and public authorities. It will continue to use this to advocate in the consumer interest on regulatory, policy and legislative matters.

- Building on the outgoing Chair's proposals to the Business Secretary, we will continue to advise the UK Government on the legislative reforms necessary to create swifter, stronger and more flexible competition and consumer protection regimes.
- In line with the CMA's statutory functions,<sup>21</sup> we will also provide advice on designing and implementing policy in a way that harnesses the benefits of competition, and protects and promotes the interests of consumers. Where we believe legislative or policy changes could promote competition, or provide better protection for consumers, we will say so.
- We will engage with legislators across the four nations to support their scrutiny work where this has a bearing on consumers and competition, including through submissions to Committee inquiries.

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<sup>21</sup> See sections 7 and 15 of the Enterprise Act 2002, giving the CMA the ability to comment and advise on the implications for markets and consumers of legislative and policy proposals.

## 4. Resources

- 4.1. In November 2020, the Chancellor announced departmental budgets for 2021/22 in the Spending Review (SR20) allocating the CMA a resource budget (excluding depreciation) of £109.6m for the year.
- 4.2. This funding is for the CMA to ensure it can continue its vital work promoting competition for the benefit of consumers, both within and outside of the UK, keeping prices low for consumers and driving innovation and productivity, which will be crucial in supporting the post-Covid-19 economic recovery. This includes additional funding to establish a new, dedicated 'Digital Markets Unit' within the CMA in 2021/22 which will build on the work of the Digital Markets Taskforce and begin to operationalise the key elements of the UK's regime to unlock competition in digital markets for the benefit of UK consumers and businesses.
- 4.3. As Principal Accounting Officer, the CMA's Chief Executive is personally responsible for safeguarding the public funds for which he has charge, for ensuring propriety and regularity in the handling of public funds and the day-to-day operations and management of the CMA. The Principal Accounting Officer is supported in discharging these duties by an additional Accounting Officer, the Chief Operating Officer.
- 4.4. We will provide more information on resource allocation in the final version of the Plan.

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