

CMA Annual Plan 2021/22 consultation

Summary of responses

© Crown copyright 2021

You may reuse this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence.

To view this licence, visit www.nationalarchives.gov.uk/doc/open-government-licence/ or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

Contents

	<i>Page</i>
1. Overall summary.....	2
2. General responses not linked to a specific theme.....	3
3. Protecting consumers and driving recovery during and after the coronavirus pandemic	7
4. Taking our place as a global competition and consumer protection authority as we assume our new responsibilities after the EU Exit Transition Period.....	14
5. Fostering effective competition in digital markets.....	17
6. Supporting the transition to a low carbon economy	21
7. Resources.....	23
Appendix a: List of responses from organisations	24

1. Overall summary

- 1.1 As part of our commitment to improve our understanding of the issues facing consumers, we increased our engagement with business and consumer organisations for this year's Annual Plan consultation. We received 164 responses to our consultation, including 20 submissions from organisations (via email and webform) and 144 from individuals. In addition, the Competition and Markets Authority (CMA) organised 13 online meetings and events with various stakeholders across all four nations of the UK to discuss its overall plan and proposed themes. We are grateful for the feedback that we have received.
- 1.2 The formal feedback received during the consultation, alongside informal feedback received during discussions with stakeholders, has shown strong support for the themes set out in the CMA's 2021/22 draft Annual Plan.
- 1.3 A number of respondents noted the importance of the CMA's role in promoting competition and protecting consumers across all sectors, in particular at a time when the UK sets its path outside the European Union (EU) and towards recovery from the COVID-19 pandemic.
- 1.4 This document summarises responses according to the themes on which we consulted, along with general responses covering points unrelated to a specific theme or covering more than one theme. The organisations that responded to the consultation are listed at Annex A.

2. General responses not linked to a specific theme

- 2.1 A number of respondents supported the CMA's commitment to increased engagement across the UK, especially on a regional basis, with a request from some respondents to provide more detail on how the CMA intends to work with consumer organisations in the future.
- 2.2 Several respondents suggested specific pieces of work (including follow-up work related to ongoing or past projects) for the CMA to carry out, including on testing costs for COVID-19; competition in small and medium-sized enterprises (SME) banking (including the impact of the government lending schemes); consumer protection issues in the caravan and holiday park industry; regulation of the parcels market; additional delivery charges for many of Scotland's rural communities; follow up work on the loyalty penalty super complaint and the operation of the legal services market across the UK; paid-for services in relation to the EU Settlement Scheme; pensions and benefits in the EU; taking action against scams; the repair sector for electrical and electronic equipment; and equal taxation treatment of businesses and business models that are in competition with each other.
- 2.3 Respondents also made the following comments:
- (a) While agreeing with the overall plan and proposed themes, a respondent argued that it is important for the CMA to communicate in ways that ordinary consumers will understand and that enables vulnerable consumers to be heard.
 - (b) The CMA could do more to communicate and celebrate successful interventions for consumers, in the press and in social media, perhaps even in schools.
 - (c) When considering mergers, a greater emphasis should be placed on the effects on employment and labour markets.
 - (d) The CMA should look at whether regulators in their current form can adequately police and support the functioning of markets and in particular review regulators' performance against their duty to promote growth.
 - (e) The CMA could introduce rewards for whistle-blowers and actively encourage any work by third parties that could uncover anticompetitive conduct.
 - (f) Greater clarity on the role and remit of new organisations such as the Office of the Internal Market are vital to ensuring businesses can prepare

for the future. In addition, businesses need clarity on the priorities and working relationship between the CMA and the Office for Investment.

2.4 Respondents queried the following:

- (a) How would the CMA manage the wide spanning range of devolved responsibilities, as well as the new OIM function, and the relationship with the establishment of Consumer Scotland?
- (b) Have we considered the impact of the Northern Ireland Protocol on competition and markets?
- (c) Would the CMA be implementing equality impact assessment against its work relating to vulnerable consumers and would the CMA sign up to the Welsh Government's Voluntary Socio-Economic Duty?

The CMA's view

2.5 We thank respondents for the suggestions of specific pieces of work.

2.6 We agree that competition issues in SME lending have been exacerbated by the effect of the pandemic and the consequent need for the Government to introduce emergency funding schemes, including the Bounce Back Loan scheme (BBLS). In addition to taking enforcement action against unlawful 'bundling' of loans and business current accounts with [Lloyds Banking Group](#) and Clydesdale Bank, we have engaged with the Government on the design of these schemes and await an announcement of the successor scheme. Post-crisis, we expect the ability of non-bank lenders to compete with an SME's own bank in the provision of loans to have been improved through secure data sharing enabled by open banking. It has been [estimated](#) that around 50% of SMEs are now using open banking services. Intermediaries such as the HMT [Designated Platforms](#) are now able to identify for SMEs those lenders whose eligibility criteria they meet prior to a loan application. The supply of funding to SMEs is a vital market for the UK economy, which we will continue to keep under close review, working alongside the Treasury, Financial Conduct Authority (FCA) and Bank of England.

2.7 In relation to parcels delivery, we are aware of long-standing concerns relating to parcel surcharging in Northern Ireland and the Highlands of Scotland and we continue to discuss these with our partner organisations. We are also aware of consumers reporting problems relating to delivery services and charges which have arisen during the COVID-19 pandemic, particularly in relation to the vulnerable who rely heavily on parcel delivery services.

- 2.8 As mentioned in the Plan, 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.
- 2.9 In relation to the legal services market, we published a review of progress in the legal services sector. In our assessment of changes in the legal services sector since our market study, we found some positive developments, but we concluded that more progress is needed.
- 2.10 We are aware of the concerns in the UK and other countries about unequal tax treatment and having a level playing field for online vs bricks and mortar businesses. It is an area where further work is needed.
- 2.11 We will evaluate the other suggestions of specific pieces of work against our Prioritisation Principles¹ as part of our pipeline of prospective work.
- 2.12 We address the other comments that we have received in turn below.
- 2.13 As mentioned in the Plan, 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, we will be increasing our 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. This includes entities representing vulnerable consumers (see also paragraph 3.12 below).
- 2.14 As mentioned in the Plan, we are committed to improving awareness of how well-functioning, competitive markets serve consumers, businesses and the wider economy, and to do more to explain how the CMA's work supports this objective, and the rationale for our priorities, plans, and selection of projects. This includes using new and existing tools to communicate our activity to a broader range of people, eg on social media through Instagram, building on our existing work on Twitter, LinkedIn and Facebook, and creating more video content. We also engage a wide range of media when making announcements about our work, targeting outlets appropriate for the activity and further raising the profile of our work.

¹ Prioritisation principles for the CMA, CMA 16 - [CMA Prioritisation Principles - GOV.UK \(www.gov.uk\)](#)

- 2.15 When investigating a merger, the CMA's mandate, by law, relates to assessing the potential impact of that merger on competition. This assessment is critical towards ensuring that consumers are able to benefit from lower prices, better service, or greater choices that effective competition is able to bring about. Assessing the other potential effects of a merger, such as the broader impact of a merger on employment and labour markets, falls outside the CMA's statutory powers.²
- 2.16 The CMA and the sector regulators have concurrent powers to apply competition law in the regulated sectors. We play a leadership role in overseeing the operation of these concurrency arrangements and work with the regulators to promote competition in their sectors. Our remit does not extend to the regulators' growth duty. It would be a matter for government to review whether regulators can adequately police and support the functioning of markets, and their performance against their growth duty.
- 2.17 The CMA has published guidance on its [informant rewards policy](#). The CMA offers financial rewards of up to £100,000 (in exceptional circumstances) for information about cartel activity. We also encourage parties and third parties to come forward and have published more information on cartels between businesses as part of [Cheating or Competing?](#) campaign.
- 2.18 The UK Internal Market Act establishes a distinct Office for the Internal Market, under the umbrella of the CMA, to deliver the independent, technical advice, and reporting and monitoring functions set out in the Act. We have started to prepare for this new role which will commence in September 2021. We will be publishing more information and guidance in due course.
- 2.19 The UK has just left the single market, which may have an impact on some markets, particularly those relying on imports. In addition, businesses are still affected by the Covid-19 pandemic. This is a period of significant change for markets. The CMA recognises this and it will continue to monitor markets, locally, regionally, nationally and trans-nationally. It is also considering how the Northern Ireland protocol will impact on markets.
- 2.20 We recognise the importance of knowing the impact of our work. As our work with consumers and the third sector develops during 2021/22, we will look at the impact of that work and continue to monitor and review our activities in response. In relation to volunteering, the CMA's existing policy allows up to six days of special leave for staff engaging in volunteering activities.

² For more detail, see [Mergers: Guidance on the CMA's jurisdiction and procedure \(2020 - revised guidance\) \(publishing.service.gov.uk\)](#).

3. Protecting consumers and driving recovery during and after the coronavirus pandemic

- 3.1 Respondents welcomed the CMA's plan to continue to protect the needs of consumers, especially vulnerable consumers, and to foster competition to promote innovation, productivity and growth, thereby supporting the UK economy, during and after the pandemic.
- 3.2 One respondent commented that protecting consumers and driving economic recovery are two distinct themes, which although related should not be amalgamated into one theme, because it risks diminishing the critical importance of each and could be confusing to some stakeholders. Another respondent agreed with pursuing these two elements 'in tandem' to ensure a fair and safe trading environment, ie protecting consumers and promoting economic growth. They noted that regulators must assist businesses to recover, and new businesses to start up and grow, but this must not be at the expense of consumers.
- 3.3 A number of respondents highlighted the impact of the COVID-19 pandemic on consumers, in particular vulnerable consumers, and on the UK economy; one of them commenting that in that context in particular the CMA's role in analysing the potential impact of market consolidation is important.
- 3.4 Several respondents supported granting the CMA administrative decision making and fining powers in relation to consumer law breaches, as a way to help to deter such breaches.
- 3.5 As regards the protection of consumers and in particular vulnerable consumers, respondents made the following comments:
- (a) A respondent welcomed the Plan's recognition that vulnerability is a state that can change over time. There was interest from another respondent in how the CMA would define and identify vulnerable consumers, and how we would weight our potential decisions and actions to protect them. A further respondent commented that the Plan does not clearly identify what vulnerability looks like as a consumer; the danger being that the definition of 'vulnerable' defaults to the common interpretation, thus failing to identify that consumers can become vulnerable as a result of specific market and commercial practices, which create consumer vulnerability as a result of being financially and contractually bound to anticompetitive practices.
- (b) A respondent requested that the CMA provide more detail on how it will continue to look at time poverty as an issue and how it will work with

consumer organisations and people with lived experience of poverty to inform its own insights.

- (c) Some respondents emphasised the importance of markets being more inclusive, as a way to protect and deliver better outcomes for consumers (in particular those with vulnerabilities). A respondent commented that the CMA's DaTA unit presents an opportunity to spot complaints that specifically relate to vulnerabilities, or markets in which people with mental health problems appear to be experiencing worse outcomes than other consumers.
- (d) A respondent welcomed the CMA's intention to continue to develop its understanding of the changing needs of consumers and how they experience markets. This respondent commented that while it is clear that the competitive process can lead to enhanced consumer welfare at a macro level, the potential for poor outcomes at an individual level also must be considered. The respondent stated that the potential trade-offs have recently been brought more sharply into focus, for example through Citizen's Advice Super Complaint on the "Loyalty Penalty", and also more generally across society as the effects of the coronavirus pandemic materialise.
- (e) A respondent commented that the specific challenges that vulnerable consumers can face should be an important part of the reform of consumer law. This respondent was strongly supportive of the CMA's proposed outreach to vulnerable groups.
- (f) A respondent asked the CMA to provide a detailed plan for how it will work with government (central and local or devolved) to deliver change for consumers (including on reducing issues for vulnerable consumers).
- (g) A respondent also requested the CMA to support the rights of the consumer to be able to go where they want for gas and electricity.
- (h) Another respondent asked the CMA to look at protection against unfair practices and bullying behaviour.
- (i) A respondent asked the CMA to allow competitive tendering and pricing.

3.6 As regards the CMA's plan to support the UK economy by fostering competition to promote innovation, productivity and growth, respondents provided the following comments:

- (a) A respondent questioned whether the CMA will protect those businesses who are at a competitive disadvantage, as a result of the COVID-19

pandemic, in particular newly self-employed and single Director-owned businesses. Similarly, a respondent noted that SMEs and microbusinesses are themselves customers who could be exploited by large suppliers and service providers. This respondent encouraged the CMA not to under-resource the exploration of input from these and third sector stakeholders.

- (b) A respondent commented that it will be vital for the CMA to develop its work and thinking about market resilience (especially in regulated sectors such as energy and financial services), as we move out of the pandemic. While a priority to support the UK in creating a competitive and innovative economy is important, ensuring that clear processes are in place to enable both a smooth entry and exit from these markets will prepare the UK for an economy in transition.
- (c) A respondent commented that achieving the UK's ambitions on innovation, growth, and productivity will only be realised through sustained business investment. Given the productivity slowdown is an issue that predates the pandemic, it is important that the competition regime recognises that these objectives are outcomes of business investment as their input.
- (d) A stakeholder commented that there is a clear shift in the North East of England towards people leaving their jobs and creating start-ups (passion economy). This stakeholder stated that there needed to be technical and practical support for businesses that may need to pivot due to the pandemic.

The CMA's view

- 3.7 We welcome respondents' support for our continued focus on protecting vulnerable consumers. We also welcome their support for our plans to foster competition to promote innovation, productivity and growth, thereby supporting the UK economy during and after the pandemic.
- 3.8 We consider that protecting consumers (in particular the vulnerable) and promoting competition are linked. Effective consumer protection promotes trust in markets, which itself promotes recovery and growth. At the same time, effective competition can protect consumers from exploitation by large businesses with significant market power. The CMA agrees that there is a balance to be struck to ensure we foster competition to promote growth, while also protecting consumers, particularly those in vulnerable positions.

- 3.9 Our engagement with government on policy that affects vulnerable consumers is both in response to emerging announcements and proactive according to CMA research and monitoring, such as in the case of the CMA's work on the cost of school uniforms.

Protecting the vulnerable from breaches of competition and consumer protection laws and poorly functioning market

- 3.10 Helping vulnerable consumers is central to the CMA's mission. As stated in the Plan, we can all be vulnerable in certain contexts. Moreover, the ongoing coronavirus pandemic, and its aftermath, could lead to a rise in the number of consumers vulnerable to some form of exploitation. We are committed to doing more to understand the issues facing consumers, in particular those who are vulnerable, for whatever reason.
- 3.11 As mentioned in the Plan, 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.
- 3.12 The CMA is extending its outreach to people and businesses across the nations and regions of the UK, particularly with third sector bodies (for example, 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.
- 3.13 We continue to pursue important consumer protection enforcement cases, which relate to vulnerable consumers, including in relation to care homes, fake and misleading online reviews, auto-renewal, and the development of consumer law guidance for IVF clinics.
- 3.14 The CMA has issued [court proceedings against Barchester Healthcare Limited and Barchester Healthcare Homes Limited](#), (together 'Barchester'). This action comes after Barchester's failure to address the concerns set out in a letter before action which the CMA sent to Barchester in July 2019.
- 3.15 In addition, the CMA commenced work in November 2019 on a review of compliance with its consumer law advice for care home providers. This work was paused in April 2020 due to Covid-19 and we are intending to resume this in 2021. Care homes providers are reminded of their obligation to comply

with consumer law. Any information received from consumers and others will inform the review when it resumes.

- 3.16 In May 2020, we launched an investigation into several major websites to see whether they are doing enough to protect shoppers from fake and misleading reviews. The CMA [secured commitments from Instagram](#), operated by Facebook, to tackle the risk that people can buy and sell fake online reviews through its platform. The work builds on previous action in this area to protect shoppers from misleading information.
- 3.17 The CMA is also 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.
- 3.18 The CMA is developing guidance for IVF clinics in the UK, in relation to patients who have paid for fertility treatment. This to ensure that they understand their obligations under consumer law. The CMA consulted on the draft guidance and it plans to publish the final version of its consumer law guidance [in March 2021. Alongside this, the CMA will also issue a short guide for IVF patients to help raise awareness of their consumer rights. This follows concerns from the CMA about fertility clinics' practices, such as lack of price transparency and misleading claims about success rates, meaning patients may be unable to compare clinics.
- 3.19 Following its [market investigation into the energy market](#), the CMA took a number of measures to facilitate switching by customers in the gas and electricity market. The CMA has published a short [overview](#) of its findings and proposals.
- 3.20 In addition to enforcement of consumer protection legislation to protect consumers from unfair practices, the CMA helps businesses understand how to ensure compliance with their obligations under competition and consumer law by publishing a range of materials, including [guidance](#), [sector specific case studies](#), [open letters to sectors](#) and compliance materials (eg [videos](#)). CMA staff also regularly contribute articles to trade press and speak at industry events to flag the risks that businesses might experience under competition law and consumer protection law.
- 3.21 The CMA promotes competitive tendering and pricing. In particular, the CMA is taking a tough approach on bid riggings and cartels more generally. This includes imposing fines on companies as well as individual accountability for wrongdoing, through our use of director disqualification in competition enforcement cases. For more information on cartels, see our [Cheating or](#)

[Competing?](#) campaign. We have also published information and tools to help public sector procurers recognise and screen their tender data for signs of illegal bid-rigging activity.³

- 3.22 The CMA regularly engages with the UK government and the governments of the devolved nations on a wide variety of policy matters, through responses to policy consultations and informal advice to officials. The CMA will prioritise its advocacy on emerging policy where there is an impact on vulnerable consumers, as well as the other themes included in its Annual Plan.

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

- 3.23 As stated in the Plan, we are committed to keeping a focus on small and medium-sized enterprises and micro 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. This would include newly self-employed and single Director-owned businesses. We are actively engaging with stakeholders representing these businesses to understand the issues they are facing, provide support (in particular via issuing guidance and materials for small businesses), and are considering whether CMA action may be required in some markets.
- 3.24 The CMA has undertaken market investigations in the energy and financial markets, resulting in a wide range of reforms designed to open up the markets, reduce barriers to entry and exit and foster competition and growth.
- 3.25 We agree that achieving the UK's ambitions on innovation, growth, and productivity will only be realised through sustained business investment. The CMA's work to promote competition – and in particular its enforcement of competition law and its independent assessment of mergers – helps to create an environment that is conducive to business investment.
- 3.26 As part of our increased outreach across the UK including the English regions we will be seeking to engage with businesses of all sizes in a range of sectors.
- 3.27 As part of our ongoing discussions with governments across the UK, we will advocate on the benefits of better and smarter regulation for the benefit of competition and consumers as well as the role of government in procurement.

³ [Public sector procurers: bid-rigging advice - GOV.UK \(www.gov.uk\)](#)

We will refresh our guidance for government officials on how to consider the impact of new policies on competition.

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

- 4.1 Respondents noted the importance of the CMA building its capacity and capabilities to support the UK economy and protect consumers now the UK has exited the EU.
- 4.2 Respondents welcomed the CMA's intention to continue to work with competition and consumer authorities in other countries. A respondent stated that on issues that affect cross-border multinational corporations, there must be communication between UK, EU and non-EU competition regimes. A number of respondents commented that cooperation with the European Commission is not specifically addressed in the draft Plan.
- 4.3 A respondent commented that when cooperating with other authorities, the CMA should promote its insights on how to make markets work well for vulnerable consumers.
- 4.4 A respondent also commented about the risk to UK consumers of being misled on cross-border pricing charges/standards following the end of the Brexit transition period and asked how the CMA intends to monitor and respond to this in 2021.
- 4.5 There was interest in greater clarity regarding:
- (a) the CMA's approach to the future of competition policy in the UK, including how the regime will operate in the new environment outside of the EU; and
 - (b) enforcement of post-Brexit national subsidy control (or state aid) rules and the CMA's possible role, which will be a matter for the UK government to decide.
- 4.6 There was also a request that more be done to promote awareness among businesses of changes to competition law post-EU Exit, including for small businesses (similar to the materials the CMA has published in the recent past for small businesses).
- 4.7 Some respondents also urged the CMA to monitor the impact of EU Exit on supply chains as well as on government policy, for example in relation to the development of Freeport areas.

The CMA's view

- 4.8 We welcome respondents' support for our plans to take our place as a global competition and consumer protection authority as we assume our new responsibilities after the EU Exit Transition Period, in particular continuing to build our capabilities.
- 4.9 The UK's exit from the EU presents both challenges and opportunities for the CMA and for the UK's competition and consumer protection regimes. The CMA remains committed to making the most of the upcoming opportunities to secure good outcomes for UK consumers, ensuring that its work is directly relevant to people's everyday life, while playing a bigger role internationally to promote competition and protect consumers. We will continue to be guided by what is best for UK consumers and businesses
- 4.10 We also welcome respondents' support for our commitment to continue to work with other competition and consumer protection authorities. It is the firm intention of the CMA to continue to strengthen cooperation with our counterparts at the European Commission and with the National Competition Authorities of the EU's Member States, as well as with our partners outside the EU.
- 4.11 Indeed, we are determined to strengthen cooperation across the globe, bilaterally and multilaterally. We will of course remain active members of international forums which are not part of the EU's institutional structures, such as the Organisation for Economic Co-operation and Development (OECD) Competition Law and Policy Committee, the OECD Committee on Consumer Policy, the International Competition Network (ICN), and the International Consumer Protection Enforcement Network (ICPEN).
- 4.12 We are very much committed to sharing insights with our counterparts on how to make markets work well for vulnerable consumers. For example, together with the Authority for Consumer and Markets (ACM) in the Netherlands, the CMA co-led a project under the auspices of the ICPEN, looking at [green claims made online](#). The CMA also significantly contributed to the [Best Practice Principles for Marketing Practices directed towards Children Online published by ICPEN](#).
- 4.13 We remain committed to helping businesses, including small businesses, to comply with the law and the impact of EU Exit on our functions. We have published [guidance on the impact of EU Exit on our functions](#) and will continue to inform businesses about the impact that EU Exit has on our work. We are liaising with stakeholders to understand the issues facing businesses,

in particular small businesses, and will work to produce further guidance to support them.

- 4.14 As mentioned in the Plan, we are extending our outreach to people and businesses across the nations and regions of the UK. Issues may be flagged, for instance in relation to the impact of EU Exit on supply chains, that could be considered by the CMA's pipeline for future projects. Where government proposes new policies (eg on Freeport areas) we will provide challenge and advice on the impacts of those policies on competition and consumers.
- 4.15 The CMA will consider any evidence it receives which indicates that UK consumers are being misled on cross-border charges/standards following the end of the Brexit transition period.
- 4.16 Post-EU Exit national subsidy control rules are currently being considered by the UK government.

5. Fostering effective competition in digital markets

5.1 Respondents supported the CMA's work in this area and that it should be a key focus in the CMA's Plan for 2021/22.

5.2 Respondents provided the following comments:

- (a) Support for the CMA continuing to investigate how platforms' currently limited responsibilities result in harm to consumers online.
- (b) Welcomed the recommendations of the CMA's Digital Market Taskforce and fully supported the Government's decision to introduce a new regulatory regime to ensure digital markets deliver benefits to consumers and to set up the Digital Markets Unit within the CMA. They encouraged the CMA to continue to make full use of its current powers to enforce competition and consumer law in digital markets, and agreed with the recognition that the interconnected nature of digital markets means the CMA needs to cooperate closely on these issues with domestic regulators in other countries.
- (c) While many small businesses have benefited from e-Commerce in 2020, some statistics from the period also suggest an increasing concentration of the profit and power in the hands of a relatively small number of very large businesses. Proper competition in digital markets – which allows small businesses to start up and grow – is vital to the future prosperity of the country.
- (d) Some respondents requested further detail on the work of the Digital Markets Unit (DMU):
 - (i) How will the CMA divide up responsibilities between the different bodies being set up to help advise on the new regulatory regime eg the role of the Digital Markets Taskforce, in particular its role in assisting with the legislative process, and the respective competencies of it and the Digital Markets Unit.
 - (ii) Clarity on the relationship between the Data, Technology and Analytics Unit, which is carrying out the consultation into algorithms, and the future workstream of the DMU which will also investigate the operation of algorithms.
- (e) Other respondents also made the following comments about the DMU:
 - (i) With current proposals representing a significant change to the UK competition landscape, it is crucial that business consultation is the

foundation of policy development as the DMU is formalised. Additionally, it is important that ample time is given to stakeholders to respond, particularly given concurrent major regulatory changes in the online harms space.

- (ii) A respondent commented that it will be important also to introduce a focus on monitoring algorithmic price fixing.
- (f) The CMA should provide more detail on how it will work with firms on the issue of data use. They also requested more detail on how the lived experience of consumers will be used to inform this work by the CMA.
- (g) Noted the importance of having the choice to select a channel and that consumers who cannot or do not access the digital world should not be excluded from accessing cost-effective deals.

The CMA's view

- 5.3 We welcome respondents' support for our work in the area and our plans for 2021/22.
- 5.4 In light of developments in digital markets and all the work we have undertaken since we last published it in 2019, we have [updated our Digital Markets Strategy](#), setting out a revised set of priorities across our digital work. The overarching ambition across our work in digital markets is now to support the establishment of the DMU within the CMA, which will be set up from April 2021.
- 5.5 Any new powers for the DMU will be subject to legislation and Government has committed to introduce legislation as soon as parliamentary time allows. We will continue to support Government as it considers this advice and in its work to develop the legislative framework. In the interim, pending new powers, our work to establish the DMU will be focused around a number of strategic aims.
- 5.6 One of these aims is to use our existing tools to maximum effect. We will continue to use our existing tools effectively and efficiently to address problems in digital markets. This includes through antitrust and consumer protection law enforcement action, markets work, and merger assessment. The CMA's operation of these tools will continue to play an important role in our digital markets work even once the DMU is established. Whilst enabling us to deliver outcomes for consumers and businesses, this work will also enable us to deepen our knowledge of digital markets and support us in

considering where to prioritise our new regulatory powers once they come into effect.

- 5.7 Another aim is to step up our work to build knowledge and skills to ensure we understand digital business models, and their opportunities and risks. Some CMA staff with experience in digital markets will join the DMU. This includes CMA staff from the Digital Markets Taskforce. This is an area the CMA has invested heavily in over the past few years, in particular through the work of our Data Technology and Analytics (DaTA) unit.
- 5.8 The DaTA unit uses the latest in data engineering, machine learning and artificial intelligence techniques to help us understand how firms are using data, what their algorithms are doing, the consequences of these algorithms and, ultimately, what actions authorities need to take. The team has also expanded to include Behavioural Scientists, to help us better understand the impact on consumers and businesses of some of the practices of digital firms, and Data and Technology Insight specialists to help us better understand digital technologies and how firms and businesses are using them. Through this work they will also support us in understanding the data and analytical skills, and powers, that will be needed for the DMU.
- 5.9 The new regime for digital markets (which the [CMA advised on via the Digital Markets Taskforce](#)) will become part of a wider regulatory framework for digital markets, including the new regime for harmful online content, and data protection laws. The CMA is now working with Ofcom, the Information Commissioner's Office (ICO) and the Financial Conduct Authority, through the [Digital Regulation Cooperation Forum](#), to consider the steps that should be taken to ensure adequate coordination, capability and clarity across all digital regulation. We are currently working with the ICO to consider how firms use data and the impact of this on consumers. We recognise the position of vulnerability of consumers who do not have access to online markets. This has also been recognised in Ofcom's work on [access to online markets and vulnerable consumers](#), with OFCOM intervening to promote participation and address consumer vulnerability.
- 5.10 Recently, the CMA has published [new research on algorithms](#), showing how they can reduce competition in digital markets and harm consumers if they are misused. It is [now seeking evidence](#) from academics and industry experts on the potential harms to competition and consumers caused by the deliberate or unintended misuse of algorithms, including the use by digital firms of personalised online choice architecture. It is also looking for intelligence on specific issues with particular firms that the CMA could examine and consider for future action. This work is being led by the CMA's DaTA unit. The research and feedback will inform the CMA's future work in

digital markets, including its programme on analysing algorithms and the operation of the [new Digital Markets Unit](#) (DMU).

- 5.11 We agree with the importance of consultation with business and more widely in this area and will continue to engage with consumer and business organisations to improve our understanding of the issues they face. We also agree with the points raised about SMEs and the importance of removing barriers to entry and growth. The CMA will continue to use its existing tools to promote competition in digital markets, removing barriers to entry which prevent innovative companies from entering, expanding and in doing so driving competition and innovation in these markets.

6. Supporting the transition to a low carbon economy

- 6.1 Respondents generally supported the CMA's work in this area as well as making it a main theme for 2021/22.
- 6.2 A respondent welcomed the CMA's leadership on the ICPEN project on misleading green claims and that stated that there may be potential to follow this initiative with some similar work locally.
- 6.3 One respondent referred to the CMA's stated intention at paragraph 2.59 of the draft Annual Plan to "work with governments to ensure that climate change policy is capitalising on the benefits of competition". They consider that a carbon tax will play an important role. They commented that there are multiple different market mechanisms (both domestic and cross-border) being used or trialled in different countries around the world to set and exercise a carbon tax and a market for carbon credits. They queried whether the CMA will lead or be involved in the work to design, implement and monitor such market mechanisms for the UK.
- 6.4 One respondent commented that to support the transition to a low carbon economy, it is vital that the competition regime works with regulators to understand the change needed across industries and within technologies. To achieve this, the regime must understand the challenges in industries across markets, and how planned investments will support the UK's policy objectives.
- 6.5 Another respondent however challenged the CMA's role in this area and that the CMA was over-reaching its function by looking to "help deliver the green growth agenda", allowing the "government's agenda to override the CMA's own priorities."

The CMA's view

- 6.6 We welcome respondents' support for our work in this area and we will continue to work to support the transition to a low carbon economy.
- 6.7 Since the publication of the Annual Plan consultation, we have issued [information to help businesses](#) achieve environmental sustainability goals, whilst staying on the right side of competition law. The document outlines the current framework for the self-assessment of competition law risk and sets out the key points that businesses and trade associations should consider when making sustainability agreements.

- 6.8 The CMA is also progressing work on its [market study into electric vehicle charging](#) and its [investigation to tackle false or misleading environmental claims about products and services that affect consumers](#).
- 6.9 Through this theme, the CMA is acknowledging the critical importance of the climate challenge. The CMA has to be alert to the wider context in which markets operate and make sure that market conditions exist to support the broader aims of society, which is why we have launched the work on Green Claims and electric vehicle charging referred to above. Where government proposes new policies to promote decarbonisation or greater sustainability we will provide challenge and advise on the impacts of those policies on competition and consumers.

7. Resources

7.1 There were no comments received on this section.

Appendix A: List of responses from organisations

1. Advice Direct Scotland
2. British Chambers of Commerce
3. Citizens Advice Scotland
4. Confederation of British Industry
5. Dream Lodge Investors Group Committee
6. Fair by Design
7. Fideres Partners LLP
8. Hausfeld & Co.
9. Holiday Park Action Group
10. Jordan-Fisher Partnership Ltd
11. Money and Mental Health Policy Institute
12. Ombudsman Service
13. Park holidays and other parks unhappy caravan owners/users action group
14. Park leisure
15. Private Healthcare Information Network
16. Scottish Legal Complaints Commission (SLCC)
17. SYJTL
18. The Restart Project
19. The Society of Chief Officers of Trading Standards in Scotland
20. Which?