

# CMA Annual Plan 2017/18 consultation

Summary of responses

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## 1. Overall

- 1.1 The nine formal responses to our consultation came from organisations that between them represent significant numbers of citizens, consumers and businesses across the United Kingdom. These formal responses are also complemented by a range of discussions during the consultation period with representatives of other organisations.
- 1.2 The feedback received during consultation has reflected widespread support for the priorities and commitments set out in the Competition and Markets Authority's (CMA) 2017/18 draft Annual Plan (the Plan).
- 1.3 There was particular support for the increased focus on swift and effective enforcement of competition and consumer law, complemented by activities to raise awareness of, and promote compliance with, the law.
- 1.4 Respondents also welcomed the CMA's continued focus on preventing and addressing consumer harm, alongside the interest in the challenges faced by small and medium-sized enterprises (SMEs). A business representative organisation welcomed the greater prominence of SMEs in the 2017/18 Plan, compared with previous Plans, acknowledging (as we do in the Plan) that such firms are vital to consumers and to economic growth but where evidence<sup>1</sup> also suggests that there has been a lower level of awareness and understanding of competition and consumer law.
- 1.5 Regulatory and consumer enforcement partners welcomed the close ongoing relationship with the CMA and highlighted the extent to which we share similar priorities and challenges, including those associated with digital markets and technological changes.

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<sup>1</sup> IFF report prepared for the CMA (2015), [UK businesses' understanding of competition law](#); CMA press release (24 October 2016): [Over half of businesses don't know unfair contract rules well](#).

## 2. Enforcement

- 2.1 Respondents welcomed the CMA's continued focus on carrying out swift and decisive enforcement of competition and consumer law. A consumer organisation welcomed our commitment to further improving the volume and speed of cases.
- 2.2 There was consistent support from business representative organisations for the CMA's twin-track approach to improving compliance with the law – carrying out tough enforcement alongside providing businesses with clear and accessible materials to help them understand the law and how to avoid breaking it. Respondents offered their continued support to help publicise the work of the CMA in the SME community.
- 2.3 A respondent from an organisation based in Scotland stated that the enforcement priorities set out in the draft Plan did not reflect differences between respective economies across the UK, whilst acknowledging that the CMA cannot reveal specific information regarding enforcement priorities for each UK nation.

### The CMA's view

- 2.4 The CMA is pleased with the support among stakeholders for our continued focus on enforcement, alongside helping the large majority of businesses who want to comply with the law. Enforcement is central to our purpose as an organisation and we will continue to use our full range of powers to protect consumers from illegal anti-competitive behaviour and harmful, unfair trading practices.
- 2.5 We welcome the continued offer of support from business organisations, particularly in relation to the promotion of materials to help their members understand the law and avoid engaging in illegal practices in the first place.
- 2.6 The CMA's selection of enforcement projects is dependent on a range of factors which are not foreseeable, including complaints, leniency applications and intelligence, and is subject to assessment in accordance with the CMA's published Prioritisation Principles;<sup>2</sup> hence it is neither possible to provide clarity on the exact enforcement cases which the CMA will carry out over the course of the full year, nor how our enforcement will vary according to different nations and regions of the UK. The CMA is, however, firmly committed to UK-wide enforcement of competition and consumer law.

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<sup>2</sup> [Prioritisation principles for the CMA.](#)

Paragraph 3.8 states that ‘We continue to seek a balanced portfolio of cases, including large cases that have wider impact and smaller, more local, cases that send the message that no business is beyond the reach of competition enforcement. We aim to tackle anti-competitive practices across the UK, covering the nations and regions therein, and a variety of sectors’.

### **3. Markets and mergers**

- 3.1 Several respondents welcomed the CMA’s recent and current markets projects, including market studies into legal services and care homes.
- 3.2 There was support for the CMA’s affirmation that we are in markets to secure lasting change and will in general be inclined to see things through, before moving on. Respondents also welcomed our intention to come back to markets in which we have intervened in the past to ensure our work was effective, and if needs be to revisit them. A business representative organisation suggested that we should return to a market no later than five years after we have concluded our work in it. A consumer organisation suggested that we set out a timetable for when we will return to a market.
- 3.3 Some respondents raised concerns over supply chains, specifically consolidation of supply chains through mergers and the practices of some organisations which they believe negatively affect fairness and transparency.
- 3.4 A business representative organisation called for the CMA to be able to intervene in mergers where there is a potential for a lessening of economic value to the UK. This organisation’s members would welcome a strong economic value test to determine whether corporate mergers and takeovers have clear economic value to the UK.
- 3.5 A business representative organisation stated that the smallest businesses, ie microbusinesses, can be as vulnerable as consumers when it comes to acting as buyers in markets. It argued that the CMA’s remit should be widened to include microbusinesses so that recent reviews and investigations into how the energy, legal services and banking sectors are working for smaller businesses can become a more routine part of the CMA’s activities.

#### **The CMA’s view**

- 3.6 We welcome support for our commitment to intervene in markets to secure lasting change and to revisit markets in which we have previously intervened to ensure our work has been effective.

- 3.7 We are committed to following through on our remedies, understanding and evaluating the impact of our interventions and ensuring that we do not keep in place measures that are no longer needed. We do this through our monitoring and enforcement work, our evaluation programme and our remedies reviews. But we believe that decisions about when to evaluate or review a particular intervention should be taken on a case-by-case basis, taking into account the individual circumstances of the case (such as the expected timescale for the remedies to take effect) as well as other resourcing demands on the CMA, as we balance tackling new problems alongside revisiting previous areas of concern.
- 3.8 The CMA recognises the concerns raised over supply chains and supports the government's actions to address poor practices, particularly around prompt payment. But we see a distinction between practices which harm the businesses within supply chains to no consumer benefit or with anti-competitive effect, and the process of robust negotiation between businesses within supply chains which can lead to lower prices and better value for money for consumers. The CMA's primary duty is to promote competition for the benefit of consumers, and so consumer welfare is paramount to the cases we choose to pursue and the interventions we make. With regard to consolidation within supply chains, we will continue to assess qualifying mergers in all sectors of the economy for their effect on competition and consumers.
- 3.9 As we set out in our submission to the Business, Energy and Industrial Strategy Select Committee's inquiry into the government's industrial strategy,<sup>3</sup> the UK has been recognised as having a world class competition-based merger control regime which, alongside ensuring UK interests, has contributed to the development of, and remains in line with, those of many of our international major trading partners. The existing substantial lessening of competition test already allows the CMA to consider a range of further possible non-price effects that might manifest from a loss of competition, for example, whether a merger is likely to lead to a loss of innovation or a loss of research and development effort or investment. Ultimately, however, the legislative framework for merger control is a matter for the UK government and Parliament.
- 3.10 As stated above, in line with our primary statutory duty and across our work, the CMA is ultimately focused on the interests and welfare of consumers. The interests of consumers and SMEs are often (though not always) aligned, and the CMA clearly recognises the impact that anti-competitive illegal practices

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<sup>3</sup> [Government's industrial strategy: CMA submission to BIS Committee.](#)

and unfair trading practices can have on businesses' – not least smaller businesses' – ability to compete on a level playing field. This is evident in our markets projects, in which we have implemented remedies specifically designed to improve how key markets work for microbusinesses and SMEs, which can sometimes have similarities to individual consumers in how they interact with other businesses. It also applies in our enforcement activities: businesses can themselves be the victims of anti-competitive conduct, and effective enforcement of the law, protecting competition and fair trading support good business practice, innovation and growth in the economy.

- 3.11 We will continue to take account of the concerns of businesses across all our work, but ultimately through the lens of consumer interests. Overall, we believe that we already have the ability, through the legislation under which we operate as well as our 'prioritisation principles',<sup>4</sup> to take a continuing strong interest in how smaller businesses engage in markets. Any amendment to the CMA's remit to formally include direct harm to SMEs or microbusinesses would ultimately be a matter for the UK government and Parliament.

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<sup>4</sup> [Prioritisation principles for the CMA.](#)



## 4. Partnership and advocacy

- 4.1 Respondents welcomed the constructive engagement to date with the CMA and the commitment to work with devolved administrations. Respondents also welcomed the CMA's advocacy for effective competition with policymakers across government.
- 4.2 Two business representative organisations with a high proportion of SME members encouraged the CMA to look closely at public procurement, particularly within local government, to ensure that tendering practices do not hinder competition.
- 4.3 An organisation based in Scotland highlighted that the CMA could set out specific initiatives and plans for how we intend to use our offices in the nations' capitals to promote awareness of competition rules to stakeholders.

### **The CMA's view**

- 4.4 We welcome respondents' feedback on the engagement to date and we are committed to maintaining close partnership working in the interests of consumers, businesses and the UK economy.
- 4.5 Advocacy continues to be an important part of our role. We have set out a new commitment in the final version of the Plan to support and challenge the government in its implementation of its industrial (and other) strategies and its development of policies affecting markets following the Great Repeal Bill.
- 4.6 In the draft Plan we stated our intention to 'continue to advise and support public procurers on how best to detect and deter bid rigging cartels'. We welcome support for this focus. We have added a new commitment to carry out further cartel lead generation events with public procurement and anti-fraud teams in central and local government events, building on events in 2016/17 for staff carrying out procurement in the NHS. We have also provided further detail on other activities focused on public procurement which we will carry out in 2017/18. We will continue to highlight at these events and through other communications activities the importance and benefits of open competition in procurement and how public procurement officials can carry out their duties to promote effective competition. Whilst we do not currently have specific work planned to address any tendering practices which may be hindering competition, we continue to be interested in receiving evidence of such practices.
- 4.7 The CMA is committed to delivering for citizens and business across all the nations and regions of the UK. To do this effectively, we will take account of

national and regional diversity. As part of this we are committed to engaging with stakeholders in each nation through our offices in Belfast, Cardiff and Edinburgh, which provide advice and challenge across the CMA.

- 4.8 Promoting awareness of competition and consumer law is a key function for our offices in the nations' capitals and we have set out some further detail on their priorities for 2017/18 in the final version of the Plan.

## **5. Developing the CMA**

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

## **6. Resources**

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

## **Appendix A: List of formal respondents**

British Chambers of Commerce

Fairtrade Foundation

Federation of Small Businesses

Financial Conduct Authority

Institute of Directors

National Farmers Union

Shepherd and Wedderburn LLP

Society of Chief Officers of Trading Standards in Scotland

Which?