

Competition and Markets Authority Annual Plan consultation 2016/17

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

Competition and Markets Authority Annual Plan consultation 2016/17

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



© Crown copyright 2015

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3 or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at www.gov.uk/government/publications

Any enquiries regarding this publication should be sent to general.enquiries@cma.gsi.gov.uk

Print ISBN 9781474126052

Web ISBN 9781474126069

ID 12111501 12/15

Printed on paper containing 75% recycled fibre content minimum

Printed in the UK on behalf of the Controller of Her Majesty's Stationery Office

Consultation information page

Scope of this consultation

The consultation is intended to give partner and interested parties the opportunity to provide views and comments on the CMA's proposed Annual Plan for 2016/17, which sets out the organisation's main objectives and priorities for the year.

Duration

14 December 2015 to 21 January 2016

Enquiries

By telephone: 020 3738 6000

By email: general.enquiries@cma.gsi.gov.uk

By post: Paul Latham, Director of Strategy, Communications and Devolved Nations, CMA, Victoria House, Southampton Row, London WC1B 4AD

How to respond

Respondents to this consultation are asked to supply a brief summary of the interest or organisations they represent, where appropriate. We ask that any suggested changes or comments on this document be submitted in writing by email or letter by 21 January 2016 at the latest.

After the consultation

We will collate responses to the consultation and publish a formal summary of these, along with a final version of the Annual Plan 2016/17 in March 2016.

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

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 write to:

Alex Chisholm
Chief Executive
CMA
Victoria House
Southampton Row
London WC1B 4AD

Contents

	<i>Page</i>
Foreword	1
1. Introduction	2
2. Enforcement	7
3. Markets and mergers	11
4. Partnership and advocacy	15
5. Developing the CMA	20
6. Resources	23
7. Consultation questions.....	24
Annex A: CMA Performance Framework	25

Foreword

This document sets out in draft the Competition and Markets Authority's (CMA's) plans and priorities for the 2016/17 financial year for consultation.

2016/17 will be the CMA's third full year, and we intend to make another significant step up in the outcomes we achieve for consumers, businesses and the economy. By the end of next year, we aim to demonstrate clear progress towards meeting the high expectations set for us at our inception of pace, scale and quality, across all areas of our work.


We will place even greater emphasis in 2016/17 on delivering swift and effective enforcement to combat breaches of competition and consumer law, focusing our resources on pushing forward and achieving important outcomes in the cases we have already begun as well as uncovering and tackling new issues. Through strong enforcement we can raise the profile of competition and consumer law and make them better understood, leading to improved compliance and also to information on further infringements that we can follow up.

We have some highly significant work to build on during 2016/17, not least completing our investigations into the energy and banking markets and then efficiently implementing any remedies identified as means of improving these markets. As we complete these projects we will develop our work into new areas of importance to consumers and the UK economy.

As the government's 'A better deal' has recently reinforced, the CMA has a key role to play in ensuring that competition delivers greater productivity across the economy as a means of driving economic growth for consumers. We know that competition, as a preferred alternative to regulation, helps to achieve good outcomes for consumers while minimising burdens on business.

We remain committed to a further step up in the speed of all our work – without compromising rigour and fairness – and we will redouble our efforts in the coming year to achieve positive outcomes for consumers in as efficient a way as possible.

This will be a year of seeing through what we started. We remain ambitious to do more. We hope that this draft Plan gives a clear impression of our plans and priorities, and we look forward to receiving your feedback and suggestions.



David Currie
CMA Chairman



Alex Chisholm
CMA Chief Executive

1. Introduction

- 1.1 The CMA's Annual Plan sets out our approach to our work and how we propose to deliver on our responsibilities in 2016/17. As part of our suite of documents setting out our corporate strategy, it articulates how we will continue to deliver our published Vision, Values and Strategy for the 2014–2017 period.¹ Our overall vision and mission, along with our five strategic goals, remain unchanged. These are set out in full at the end of this chapter, and continue to inform our choices and decisions.
- 1.2 2016/17 will be our third year as the UK's lead competition and consumer authority, and the final year of the initial three-year CMA Strategy. By the end of the year, we expect to have substantial evidence that we have delivered a significantly improved regime, including an assessment of the direct financial benefits to consumers over the past three years that will for the first time be entirely based on CMA work.

Strategic Assessment and priorities for 2016/17

- 1.3 Our choice of work and priorities continues to be informed by our Strategic Assessment of the longer-term risks to UK consumers and markets, published in November 2015.² The Assessment highlights risks across six thematic areas, all of which remain significant for the CMA into 2016/17:
1. Consumers' access to markets and barriers to decision-making
 2. Online and digital markets
 3. Technology and emerging sectors
 4. Regulated sectors and infrastructure markets
 5. Markets for public services
 6. Sectors that are important to economic growth
- 1.4 We have already undertaken a number of projects in the areas listed above and we will do more in 2016/17. Our work in the digital sphere continues to develop as almost all markets move towards a greater degree of online activity. As such, we will identify key specific digital behaviours and practices that we can usefully address, and will prioritise these accordingly. We will

¹ www.gov.uk/government/publications/vision-values-and-strategy-for-the-cma.

² www.gov.uk/government/publications/cma-strategic-assessment.

follow up our projects on online reviews³ and on the commercial use of consumer data⁴ with work on price comparison websites and in other areas. Another area of likely focus under the broad heading of ‘sectors important to growth’ is infrastructure markets – the government has announced a new National Infrastructure Commission, and we hope to work with the Commission and others to ensure that competition issues in this area are fully considered. We will also continue to focus on markets for the delivery of public services, as the use of market mechanisms to provide services to citizens continues to expand into new areas.

- 1.5 We will develop a new Strategic Assessment during the course of 2016/17, which will inform a review of our overall corporate strategy.
- 1.6 We set out in this Plan a number of key commitments and initiatives for 2016/17. These are intended as a challenging, ambitious set of targets to work towards based on our known budget and portfolio, and are an indication of our priorities for next year – in addition to our performance framework and our other statutory and public commitments.
- 1.7 We enter 2016/17 with a substantial portfolio of ongoing work. Our capacity to undertake new non-mandatory work is affected by this as well as by the volume of work we are required by statute to carry out.⁵
- 1.8 Across all of our work, we also expect to encounter a range of challenges. Where these can be foreseen, we will mitigate them as far as is possible – for example, by seeking to ensure that our analysis is robust against legal challenge, and by managing our staff and our workload carefully to allow us to deal with changing demands over the course of the year.
- 1.9 However, there are a number of factors that are beyond our control, to a lesser or greater extent, which may have an impact on our choices and what we carry out against our aims and intentions over the coming year. Such factors might include consumer or economic developments and the decisions made by others; the extent and nature of the evidence available to us in potential competition or consumer enforcement cases including the number and quality of leniency applications that we receive; and the litigious context in

³ www.gov.uk/cma-cases/online-reviews-and-endorsements.

⁴ www.gov.uk/cma-cases/commercial-use-of-consumer-data.

⁵ Mandatory work is that which the CMA is obliged by law to undertake, for example, a merger assessment and decision when a merger notice is submitted to the CMA, a market investigation following a market investigation reference made by a sector regulator with concurrent powers, or a regulatory appeal. The CMA’s other work – market studies, a market investigation following a market investigation reference made by the CMA itself, and competition and consumer law enforcement – is not strictly mandatory but is of course important in terms of fulfilling the CMA’s legal duty to promote competition for the benefit of consumers

which we work. Where such factors have a significant impact on our activity over the course of the year, we will note this in reporting on our achievements.

‘A better deal’ and Strategic Steer

- 1.10 The government recently published its plan to increase competition in the economy, ‘A better deal’, and its new Strategic Steer to the CMA.
- 1.11 Both documents emphasise the contribution that open and competitive markets can have on productivity, and we agree; such markets stimulate innovation, help to increase productivity, and ultimately support consumers via economic growth. We published a detailed paper⁶ exploring the links between competition and productivity in 2015, and in scoping our work, we are now considering whether poor productivity in particular sectors is an indicator of competition and market problems that we may be able to address.
- 1.12 The Steer underlines the importance of the CMA’s work to promote competition as an alternative to regulation, working closely with concurrent regulators and others to ensure competition is used effectively, as well as helping government to avoid imposing unnecessary regulatory or legislative barriers to competition. The Steer also explicitly encourages the CMA to make recommendations on government interventions at a local level, working with local authorities to ensure that their activities do not have an adverse effect on competition.
- 1.13 The Steer reaffirms the government’s commitment to implement CMA recommendations unless there is a strong policy reason not to do so. Demonstrating this commitment, ‘A better deal’ pledges action on specific previous policy recommendations to government by the Office of Fair Trading (OFT), and reiterates the government’s commitment to act on the recommendations arising from the energy and retail banking market investigations.
- 1.14 We fully agree that competition can be a key means of ensuring that national and local markets work well without the need for heavier regulation. We will also continue to review our own processes, procedures and practices to remove any of our own unnecessary burdens on business – for example, reviewing further tranches of old remedies imposed in previous markets and mergers investigations and removing those that are no longer necessary.

⁶ www.gov.uk/government/publications/productivity-and-competition-a-summary-of-the-evidence.

1.15 We see a close fit between the Steer and our own emerging plans for next year, although of course we remain independent of government in our choice of work and our prioritisation of specific issues. Our independence is widely recognised (including in the Steer) as a fundamental strength of the UK regime and we will ensure that it is preserved. All of our decisions are based ultimately on an assessment of how we can best work to the benefit of consumers, in line with our primary statutory duty, and this is our key consideration in the choices that we make as an organisation.

CMA tools and functions

1.16 We take a holistic, integrated approach across our work, selecting those tools we believe will achieve maximum positive impact for consumers and the UK economy.

1.17 The CMA's functions include:

- To investigate mergers that have the potential to lead to a substantial lessening of competition.
- To conduct studies and investigations into particular markets where there are suspected competition and consumer problems.
- To investigate individual businesses to determine whether they have breached UK or EU competition law and bring criminal proceedings against individuals who commit the cartel offence.
- To enforce a range of civil and criminal consumer protection legislation, tackling issues which suggest a systemic market problem or which affect consumers' ability to make choices.
- To work with sector regulators that have concurrent competition law powers to enforce competition law in the regulated sectors and to promote competition for the benefit of consumers in the regulated sectors (gas, electricity, water, post, aviation, rail, communications, financial and healthcare services).⁷
- To conduct regulatory appeals and references in relation to price controls, terms of licences or other regulatory arrangements under sector-specific legislation.

⁷ These include decisions of regulators such as Ofcom, Ofgem, Ofwat, Monitor, the Financial Conduct Authority, Payment Systems Regulator, Northern Ireland Utility Regulator, Office of Rail Regulation and the Civil Aviation Authority.

CMA vision

Our mission is to make markets work well in the interests of consumers, businesses and the economy, and our overall ambition is consistently to be among the leading competition and consumer agencies in the world. Underpinning our mission are five strategic goals:

Deliver effective enforcement

- Deter wrongdoing and prevent consumers losing out from anti-competitive mergers or practices.
- Ensure that businesses and individuals understand the law and know that effective sanctions follow if they break it.
- Pursue the right cases and manage them well so we make good, timely decisions that stand up to appeal.

Extend competition frontiers

- Use the markets regime to improve the way competition works where evidence shows it can most benefit consumers.
- Ensure the application of competition law and policy in regulated sectors, working alongside sector regulators.
- Act to encourage effective competition where markets and business models are evolving.

Refocus consumer protection

- Empower consumers to exercise informed choice, using both competition and consumer powers to help markets work well.
- Lead policy development and identify and pursue complex, precedent-setting cases where the CMA is best placed to intervene and can have the greatest impact on markets.
- Support and work effectively alongside other UK consumer agencies.

Achieve professional excellence

- Conduct legal, economic and financial analysis to the highest international standards while avoiding unnecessary burdens on business.
- Manage all our cases efficiently, transparently and fairly to meet demanding deadlines and external expectations of pace, rigour and fairness.
- Lead the development of legal, economic and business thinking on competition.

Develop integrated performance

- Combine staff from different professional and organisational backgrounds into effective multidisciplinary teams.
- Use all the competition and consumer measures at our disposal where they can have most impact and apply lessons and experience from each to improve its performance.
- Complement the work of other consumer, regulatory and enforcement authorities, and act as a trusted competition adviser across government.

2. Enforcement

- 2.1 The effective enforcement of competition law and consumer protection law is central to the CMA's purpose. Our enforcement powers enable us to tackle conduct that breaches competition or consumer law, and also to deter businesses and individuals from future infringements. The CMA is determined to protect consumers from illegal anti-competitive practices, and from harmful unfair trading practices. Combating such practices matters for businesses as well as consumers – not only because businesses can themselves be the victims of anti-competitive conduct, but because effective enforcement of the law, protecting competition and fair trading, encourages good business practice and business efficiency. That, in turn, enables markets to work better, to the overall benefit of our economy and our society.
- 2.2 In 2016/17, we will seek to carry out a higher volume of enforcement cases and projects, doing so as efficiently and quickly as possible, without compromising fairness and rigour. We will base these on strong evidence, aiming to achieve significant impact in terminating illegality and deterring future breaches of the law.

Competition enforcement

- 2.3 Over the past few years, we and our predecessors in the OFT have sought to improve various aspects of competition enforcement – in particular fairness and rigour, the volume of case work, and the time taken on cases. Similar ambitions were expressed by the government in the March 2012 policy paper that paved the way for the legislative changes to the UK competition system.
- 2.4 We have made considerable progress in addressing concerns about fairness, rigour and process, and this has been noted by external experts and judiciary. Of course, there are no grounds for complacency, and we will maintain and build on our progress to date.
- 2.5 At the same time, we are conscious that there remains work to be done in increasing the volume and speed of case work. Our figures for opening new cases and the speed with which we have progressed them compare favourably with past practice in UK competition enforcement, and we are determined to maintain and improve this record.
- 2.6 We seek a balanced portfolio of cases – including large cases that have wider impact, and smaller, more local cases, that send the message that no business is beyond the reach of competition enforcement. We want to cover the nations and regions of the UK, and a variety of sectors. We will have regard to, among other factors, our strategic interest in looking at emerging

markets, at markets for public services, and at markets served by small and medium-sized enterprises (where evidence suggests that there is a lower level of awareness and understanding of competition law). These objectives are, of course, subject to the fact that we cannot control the type of cases that are drawn to our attention or of which we otherwise become aware. Within the CMA, the most serious anti-competitive agreements between competitors are handled by a specialist cartels group. This group has the expertise to handle cartel-specific aspects of enforcement, such as the use of our immunity and leniency programme and of covert intelligence techniques to unearth evidence of cartels, and prosecutorial skills where the criminal offence is engaged.

- 2.7 In terms of the criminal cartel offence, our approach over the next year must, inevitably, draw on lessons learned from the recent galvanised steel tanks trial. An important aspect of this is that those defendants who successfully pleaded ‘not guilty’ based their defence on the contention that their action did not meet the legal requirement that the offence could only be committed if the person acted ‘dishonestly’. It is welcome that the law has now been changed so that, in respect of cartel activity occurring from April 2014 onwards, there will no longer be a requirement to prove ‘dishonesty’ – the UK competition authorities, and the government, had considered that this requirement represented a significant impediment to successful prosecution. In respect of cartel activity that occurred before April 2014, for which the ‘dishonesty’ requirement still applies, we will review future cases having regard to the difficulties highlighted in last summer’s trial.

Consumer protection

- 2.8 Our powers to protect consumers from unfair trading practices and unfair contract terms complement our powers to protect consumers from anti-competitive practices. As with competition law, the CMA shares its consumer protection powers with a range of partner organisations. We will prioritise projects where there are systemic market problems or where consumers are unable to exercise choice, or where we can expect to achieve wider impact, for example, by developing the law or by having a deterrent effect. This role complements and reinforces the effects of our other work to improve markets and to support productivity and economic growth, by addressing problems where competition enforcement alone does not, or cannot, make a market work well for consumers.
- 2.9 In developing our pipeline of consumer work, we will rely firmly on the intelligence we gather on consumer issues, including from partner organisations, and we will continue to use our improved digital capabilities to help us understand the problems that consumers encounter.

2.10 In October 2015 the CMA, together with other enforcers such as Trading Standards Services (TSS), acquired a new power to incorporate additional measures into undertakings provided by a trader or imposed by a court. These 'enhanced consumer measures' can require the trader to provide redress for consumers affected by a breach of consumer law, improve compliance with the law, or improve information provided to consumers to promote greater competition. This is an important addition to our toolkit for achieving better outcomes for consumers.

Compliance and complaints

2.11 We know most businesses want to comply with the law and it is important to help them avoid illegal anti-competitive practices and unfair trading in the first place, and to report to us when they see such practice by others. Alongside stepping up enforcement we will make increasing use of communications tools to raise awareness of the law, change behaviour, minimise the burden of complying (especially for smaller firms), and encourage complaints.

2.12 During 2016/17 we will continue to take the outcomes of enforcement cases to ensure that relevant businesses and consumers are fully aware of the implications for their own behaviour. We will also target sectors where intelligence informs us that compliance may be poor, aiming to increase awareness of the law and generate complaints that we can follow up.

2.13 During 2015/16 we produced new online films and tools to help SMEs understand competition law better, and we expect to produce a range of materials to help businesses comply with new laws on unfair contract terms. During 2016/17 we will use insights from the research and pilots we have conducted to ensure that as many businesses as possible have access to these materials.

Key commitments and initiatives

2.14 In 2016/17, we will:

- launch as many new civil competition enforcement investigations as possible, where we have the requisite evidence, with four as a minimum;
- open new criminal investigations and pursue prosecutions as appropriate, having regard to lessons from our most recent case as well as the change in the law in respect of cartel activity occurring from April 2014;

- continue to improve processes and challenge our ways of working to decrease the time taken to conclude competition enforcement investigations against a rolling three-year average benchmark;
- launch as many consumer cases or projects as possible where we have the requisite evidence; with three as a minimum;
- make appropriate use of advisory and warning letters in the case of suspected breaches of competition law, encouraging compliance without the need for a full formal investigation, and reinforcing this by publicising the broad facts where appropriate; and
- conclude our consumer enforcement cases effectively either by agreement or by proceeding to litigation, with the majority to be concluded within 18 months of being publicly opened.

3. Markets and mergers

- 3.1 In some markets, change may be needed to maximise the potential of competition for the benefit of consumers and the economy, even where there is no breach of competition or consumer protection law. The UK's markets regime allows us to look at specific markets or practices, and to consider how competition can work better in these markets in the interests of customers (whether consumers or business customers).
- 3.2 Meanwhile, the mergers regime allows us to consider whether mergers and acquisitions may lead to changes in a particular market which could lead to adverse outcomes or distort the competitive dynamic among businesses, which negatively affecting consumers.

Markets work

- 3.3 The CMA will conclude its two major market investigations into energy and retail banking this year, both of which are conducted by groups of independent members from the CMA's panel, and conclude the private healthcare market investigation begun by the Competition Commission. Following the publication of final reports, the CMA will focus on the efficient implementation of any remedies which may apply.
- 3.4 In addition to these investigations, we will launch new market studies, calls for information or market investigations, focusing on areas in which we perceive there to be significant risks to consumers and the effective functioning of markets.
- 3.5 Price transparency and the ease by which consumers can compare different products and services are features of both our energy and retail banking current market investigations, as well as some previous investigations. Online choice tools can play a central role in addressing competition concerns in UK markets. In 2016/17 we plan to undertake analysis on price comparison websites, with the aim of understanding whether problems exist in the sector and if so what changes might be needed to make sure it operates competitively and in the best interests of consumers.
- 3.6 We will work closely with the government's new National Infrastructure Commission and others, to ensure that infrastructure markets operate competitively and effectively, and we will continue to focus on public services markets, as delivery of these services to citizens becomes increasingly subject to market mechanisms.

- 3.7 We will work independently or alongside sector regulators, as each project demands.

Mergers work

- 3.8 Under the Enterprise Act 2002 (as amended by the Enterprise and Regulatory Reform Act 2013) the CMA is obliged to obtain and review information relating to merger situations, and is under a duty to refer for a phase 2 investigation relevant mergers where it believes that it is or may be the case that they have resulted or may be expected to result in a substantial lessening of competition in a UK market. The CMA's work on mergers seeks to ensure that the harmful effects of some mergers, which can include higher prices, lower quality or reduced innovation in a market, are mitigated, prevented or remedied.

- 3.9 The voluntary nature of the UK merger regime is valued by business as it ensures that mergers that raise no competition concerns are not unduly held up by regulatory scrutiny, and thus helps to minimise burdens on business. In order to deter anti-competitive merger activity while preserving the benefits of the voluntary regime, the CMA will maintain a balanced and targeted approach to investigating non-notified mergers. In certain circumstances, the CMA may decide not to refer a merger for a phase 2 investigation even if it believes that it is or may be the case that the merger has resulted or may be expected to result in a substantial lessening of competition in a UK market. As well as doing so in markets of insufficient importance, the CMA can also accept undertakings in lieu of a reference for a phase 2 investigation. During 2016/17 we will review our policy and procedure in relation to accepting undertakings in lieu. If there is a case for change on our application of any exception to the duty to refer, we will consult on revised guidance.

Remedies implementation, monitoring, enforcement and review

- 3.10 Where the CMA makes a final decision to introduce remedies in markets or mergers cases, it has to ensure that these measures are appropriately implemented, monitored and enforced. We are responsible for all aspects of the 'remedies life cycle', from implementing remedies to making an Order or accepting undertakings, monitoring and enforcing compliance and reviewing whether remedies remain fit for purpose. We carry out these functions in relation to merger and market remedies in a timely and effective manner, and seek to capture the benefits arising from institutional reform in this area of activity.
- 3.11 In 2015/16 we commenced a programme of work to systematically review our existing remedies with the aim of removing measures that are no longer

necessary or may now be restricting or distorting competition. We will build on this work in the coming year, launching further reviews of existing mergers or market remedies. This will include a further tranche of 30 to 40 old merger remedies that are more than ten years old, meaning that the CMA will have reviewed most of the merger remedies over ten years old that it inherited from the predecessor organisations. Further reviews will be selected by application of our prioritisation criteria, and may be either on our own initiative or in response to submissions from affected parties.

- 3.12 The CMA is subject to statutory timescales for the implementation of remedies – we are making a commitment to meet these timescales without the need for an extension in at least 70% of phase 2 merger and market cases in the coming year.

Regulatory appeals

- 3.13 The CMA is responsible for references and appeals against the decisions of certain regulators,⁸ including the responsibilities conferred more recently by the Health and Social Care Act 2012, the Civil Aviation Act 2013 and the Financial Services (Banking Reform) Act 2013.
- 3.14 Although it is not possible to predict which (if any) decisions of which regulators will be referred or appealed to the CMA, we have no reason to believe that our work will diminish in 2016/17. We are therefore working to ensure that we have the necessary skills among our staff and members to resource these cases appropriately. In selecting groups of CMA panel members to consider such cases, the CMA will ensure that there is no conflict between their role in doing so and any other roles they are performing for the CMA.
- 3.15 The current regulatory appeals regime is quite a varied one. The CMA is ready to work with the government to implement any reforms it decides to make to bring greater consistency to the regimes.

⁸ These include decisions of regulators such as Ofcom, Ofgem, Ofwat, Monitor, the Financial Conduct Authority, Payment Systems Regulator, Northern Ireland Utility Regulator, Office of Rail Regulation and the Civil Aviation Authority.

Key commitments and initiatives

3.16 We will:

- launch an internal project to consider the use of formal information-gathering powers across the CMA's mergers and markets portfolio at both phases;
- launch two to four new markets projects in the course of this year, including one on the subject of price comparison websites;
- launch one to two new pieces of policy or markets work in the regulated sectors;
- seek to clear at least 70% of merger cases that are less complex (and therefore do not require an issues meeting and case review meeting) within 35 working days;
- publish guidance on how to interact with the CMA on non-notified mergers including the operation of our mergers intelligence work;
- launch a review of the CMA's Commentary on Retail Mergers;
- launch a review of 30 to 40 older, mostly behavioural, merger remedies using a similar approach to the review of 76 structural merger remedies conducted in 2015/16;
- launch three to four further reviews of existing merger or market remedies in the course of this year;
- launch an internal review of the practical, legal and policy considerations involved in the design, implementation, enforcement and monitoring of remedies in regulated sectors; and
- seek to implement phase 2 merger and market investigation remedies without the need for an extension to the statutory deadline in at least 70% of cases, as measured as a three-year average of all relevant merger and markets cases.

4. Partnership and advocacy

- 4.1 Achieving our strategic goals depends heavily on effective working with our range of partners – including consumers themselves – and making the best possible case for competition, including to those whose principal focus is on other policy objectives. In line with our strategic goal of developing integrated performance we will build ever closer relationships with partners, to ensure that the competition and consumer regimes can achieve the maximum possible benefit with minimal duplication or burden on business.

Consumer engagement

- 4.2 We have worked hard to build a strong understanding of consumer issues and concerns across the entire range of our work, and remain committed to maintaining and developing this understanding in the future. We will do this in 2016/17 by:

- Establishing the ‘consumer lens’ as a series of challenges throughout the life cycle of our projects, so that we are proactive in our approach to assessing the impact of our work on consumers. This systematic challenge that we have built into our processes ensures that in all projects across our portfolio we will have a clear understanding of, and take proper account of, the consumer perspective.
- Building on our experience to date of trialling wider engagement initiatives, such as regional and thematic ‘ideas days’, project-specific consumer ‘round tables’ and dedicated consumer response hearings. We will continue with these approaches to wider consumer engagement in our future projects.
- Investing in our digital capability and supplementing our existing intelligence gathering techniques with more sophisticated monitoring of online information. We have trialled new approaches and are developing our understanding of the potential value of this additional capability.
- Evaluating our progress so that we continue to develop and expand the ways in which we engage with consumers.

Consumer partners

- 4.3 We will continue to play an active role in the Consumer Protection Partnership (CPP), which brings together key players in the consumer landscape, and will lead a CPP working group to tackle one of the priority areas of consumer detriment identified as part of the CPP Strategic Assessment. In all our work

with the CPP we will aim to bring a market focus to its collective assessment of the important issues facing consumers to ensure that the Partnership's activities have the widest possible impact.

- 4.4 We will continue to work with the National Tasking Group, part of the National Trading Standards Board, to ensure that the highest priority consumer cases are allocated appropriately between the CMA and TSS. We will also support the work of TSS, for example in the area of unfair contract terms where the CMA holds the policy lead, and will continue to work closely with individual TSS on specific cases.
- 4.5 We will we continue to develop our relationships with other important consumer partners, outside of the CPP groups including through the Consumer Concurrencies Group, which is chaired by the CMA, and by strengthening our bilateral relationships with others such as the Advertising Standards Authority, the Information Commissioner's Office and Which?

Concurrent regulators

- 4.6 The CMA and concurrent regulators are working together closely to use the enhanced concurrency arrangements, which came into effect in April 2014, to make competition work better for consumers in these essential services. Our aim is to ensure that competition law is applied effectively and consistently in regulated markets such as energy, communications, rail, water and financial services.
- 4.7 The sector regulators are subject to statutory obligations to consider, before taking enforcement action under certain direct regulatory powers,⁹ whether enforcement under the UK or EU competition law prohibitions would be more appropriate. There has already been much positive progress over the 18 months in which the enhanced concurrency arrangements have been in place, which we will look to build on in 2016/17. The CMA's work on competition in the regulated sectors does not just focus on competition law cases, but also involves broader thinking and advocacy on opportunities to promote effective competition, for the benefit of consumers, in these sectors, working with the relevant regulators and other interested parties as appropriate.

⁹ As specified in the relevant legislation.

The UK and beyond

- 4.8 The CMA is a UK institution, with a remit that extends across England, Northern Ireland, Scotland and Wales. While most of our staff are located in our London office, we have representatives in Scotland, Wales and Northern Ireland.
- 4.9 We regularly hold CMA board meetings in each of the UK's national capitals, allowing us to discuss issues face to face with key players, and will continue to do so during 2016/17. We will also work closely with the Scottish government on any appropriate follow-up to its strategic assessment of competition and consumer issues in Scotland, on which we worked collaboratively together during 2015/16, and we continue to consider new ways to gather insight and intelligence in Wales and Northern Ireland. As the devolution agenda also gathers pace within England, we will ensure that we engage with the economic and policy diversity that exists right across the UK.
- 4.10 Internationally, the UK strives to be one of the world's leading competition and consumer regimes. With our primary duty to promote competition, both within and outside the UK for the benefit of consumers, we coordinate our actions with those of agencies in other countries and, where appropriate, help other jurisdictions to develop robust systems.
- 4.11 We have a role to play in coordinating our actions with international counterparts on cases and projects, in particular working closely with other EU member states and with the European Commission as part of the EU Consumer Protection Network and European Competition Network. We will continue to collaborate with our European and international partners to ensure that consumers are protected in relation to domestic and cross-border transactions.
- 4.12 Our work internationally also help us to influence UK and wider law and policy development. Our work with the European Commission is especially important to us, and we will continue this actively. We will focus in particular on providing input to its work aimed at fostering the Digital Single Market and reducing barriers between member states to online commerce for businesses and consumers; efforts further to empower national competition authorities across Europe to be effective enforcers; and the ongoing review of the EU Merger Regulation.
- 4.13 Recognising that competition and consumer issues – and businesses themselves – are increasingly global, we will continue to play a constructive role in international organisations and networks, including the Organisation for Economic Co-operation and Development (OECD) and International

Competition Network. In July 2015, we assumed the presidency of the International Consumer Protection and Enforcement Network (ICPEN) and we will continue to hold the role until June 2016. ICPEN is a network of more than 50 countries, whose aims are to protect consumers' interests around the world. Under the banner of 'Better Enforcement Together' we have been focusing on delivering enforcement to tackle issues of common concern to consumers across the globe. We are also seeking to build capacity for the members of the Network and for the Network as a whole. We are working closely with Germany and Turkey, which assume the Presidency in 2016/17 and 2017/18 respectively. ICPEN has been a rich source of intelligence and has provided significant opportunities to work with our international enforcement partners. We expect this to continue in the coming year.

- 4.14 In addition to participating in multilateral organisations, bilateral relations are key to our work. We will continue to develop our bilateral relationships with our counterpart competition and consumer authorities, prioritising in particular those relationships that can best support our strategic goals and the delivery of our frontline work.

Advocacy and evaluation

- 4.15 We will continue to use our expertise, knowledge and insight to advise others, including government, on how competition can work for the benefit of consumers, businesses and the UK economy. We will challenge current and proposed policies that unnecessarily restrict or impede competition, and will work with colleagues in central and local government to help them to understand the benefits of doing so. We will assist local authorities to understand competition law and explore how competition tools, rather than regulation, may help to achieve better market outcomes in local areas.
- 4.16 Our advocacy work has three main areas of focus:
- (a) proactive advocacy on substantive issues where we consider government could improve how markets function for the benefit of consumers;
 - (b) reactive advocacy, responding to government requests for assistance in ensuring that competition considerations are properly factored in to policymaking, and responding to emerging situations and the actions of government, to ensure that emerging legislation does not harm competition; and
 - (c) enhancing the capacity of other government departments, local authorities and relevant bodies to design policy that ensures the benefits of

competition are realised and to be better able to identify and address competition issues in markets they oversee.

Our post-consultation Annual Plan will highlight specific advocacy work to advise government. As a minimum we expect to continue to advise government in areas where we have ourselves done work recently, for example on the regulation of higher education, the use of public sector information and detecting bid-rigging in public procurement.

- 4.17 We will continue to draw on the best academic thinking and practical experience of competition and consumer interventions to evaluate our work, including:
- (a) estimating the impact of each project as it completes;
 - (b) evaluating projects to identify the costs and benefits, and lessons learned; and
 - (c) exploring further how best to assess the CMA's wider impact on economic growth including through deterrence or improving the prospects for exit, entry and innovation in markets.

Key commitments and initiatives

- 4.18 We will:
- successfully conclude our term as Presidency of ICPEN, working with national and international partners to deliver a programme of work focused on enforcement on issues of global concern to develop and deliver our consumer portfolio;
 - continue to play a leading role in the development of consumer protection internationally, particularly in Europe;
 - carry out and publish research among stakeholders in a range of our concluded projects, to inform further improvements to our project delivery;
 - publish two economic research projects, including one on the indirect benefits of competition policy to the economy and consumers, and two evaluations of the impact of completed work;
 - based on our work, make recommendations to the government on the impact of policy frameworks on competition in at least two sectors; and
 - work with the National Infrastructure Commission to help it to take full account of competition issues.

5. Developing the CMA

- 5.1 The efficient and effective delivery of our mission requires a strong internal organisation and the recruitment, retention and development of a highly talented staff. In line with our strategic goals of achieving professional excellence and developing integrated performance, we will continue to identify opportunities to improve the effectiveness of the organisation. We will make the most of our matrix structure to ensure that colleagues feel invested in the CMA, are engaged in their own work and aware of what is happening in the wider organisation. We will look for opportunities to refine and improve our processes to ensure that we are highly effective, that we share and learn from best practice internally and externally, and that we promote a culture of continuous improvement within the organisation.

Project management and delivery

- 5.2 We will further embed and refine our common approach to managing projects across the CMA portfolio, reflecting on the experience of the CMA to date. We will investigate how to achieve the outcomes we need with leaner project teams and lower resource costs while ensuring we retain legal and economic rigour. Our systems and working practices will continue to promote flexibility and collaborative working while maintaining an overarching focus on timely and robust decisions.

Matrix-based working

- 5.3 Supported by our Project Management Office we will continue to bring together different professions, experience and skill sets to form multidisciplinary teams that maximise the achievement of robust outcomes at pace. Integrating people in this way will further enhance the skills and experience of our staff and build greater organisational capability and resilience, as people benefit from opportunities to work with and learn from others.

Professional development

- 5.4 Dedicated teams – a CMA Academy for skills specific to our work, a Know How team to share information and precedent, and an HR team to access the Civil Service Learning framework for management and leadership skills – will work together to continue to evolve our learning and development offer, based on business needs. This will enable colleagues to develop the core skills, knowledge, and behaviours they need to contribute to CMA business effectiveness, meet professional requirements and carry out projects in line with organisational specifications and performance management standards.

Professional groups

- 5.5 We aim to help staff achieve their aspiration, potential and the highest standards of performance. We will continue to embed career and professional development for CMA staff through leadership from their Heads of Profession and our Career and Professional Development Hub.

Identifying and developing potential

- 5.6 We need the right people in the right role, with the right skills, at the right time. Investing in all of our people will mean we can improve the skills we have to help us to meet our current and future challenges, and enable colleagues to reach their full potential and perform at their best.
- 5.7 We will add value to the work of the CMA, its staff, colleagues and community by creating mechanisms and processes that enable colleagues to learn, develop and maximise their talents. This will, in turn, support the CMA's ambition to be a great place to work.
- 5.8 We will ensure our people have greater control over their career development, and will support their development and career plans to enable them to reach their full potential. This will enable us to better attract, develop and retain our staff, enhancing the CMA's reputation externally as a great place to work. We will measure our success through the annual Civil Service People Survey.
- 5.9 We will continue to identify opportunities to increase people management effectiveness in the organisation by making improvements in the 4C's of the CMA People Strategy: Commitment, Capability, Capacity and Culture. We will measure the impact of these via staff engagement surveys, staff turnover and key people indicators and taking account of internal challenges presented by Civil Service Reform and the Spending Review.
- 5.10 We will promote and support continuous improvement within the CMA using the outcome of the Spending Review to inform and guide our medium- and long-term operational plans. This includes continuing to assess and refine our approach to projects, and identifying opportunities to improve the efficiency and pace of how we select, manage and carry out our portfolio of work.

Key commitments and initiatives

- 5.11 We will:
- increase the engagement score in the annual Civil Service People Survey to become one of the Civil Service High Performers, by taking corporate

and local action on feedback from our staff as a result of participation in the survey, fulfilling our ambition to make the CMA a great place to work;

- comply with the general Public Sector Equality Duty and the specific duties. We will give a progress report on how the CMA is demonstrating its achievement of these against its published objectives and our desire to create an inclusive environment and culture;
- meet the government target of paying 80% of undisputed invoices within five working days of receiving them; and
- find ways to achieve the outcomes we need with leaner project teams and lower resources costs, while ensuring we maintain legal and economic rigour.

6. Resources

- 6.1 The 2015 Spending Review settlement allocated the CMA's budget for 2016/17: Resource Departmental Expenditure Limit (Resource DEL) budget before depreciation of £65.94 million and a Capital budget of £2.2 million. This is a flat settlement, over the remaining Spending Review period, representing a reduction over the four years of 7% in real terms.
- 6.2 The Resource DEL settlement places a limit of £17.75 million on administration expenditure (before depreciation).
- 6.3 We will provide more information on the allocation of resources available to the CMA in the final version of our Annual Plan.

7. Consultation questions

7.1 2016/17 will be the CMA's third full year, and we plan to make another significant step up in the outcomes that we will achieve for consumers, businesses and the economy. We hope that this draft Annual Plan gives you a clear impression of our plans and priorities for next year as they currently stand, and we look forward to receiving your feedback and suggestions.

- Do you agree with the overall direction and areas of focus for the CMA set out in the 2016/17 draft Annual Plan?
- Is there anything more you think we should do during 2016/17?
- Is there anything you think we should de-prioritise during 2016/17?

Annex A: CMA Performance Framework

- A.1 The CMA, as a non-ministerial department, has the freedom that status confers to prioritise its resources and its activity. It has full operational freedom to make case decisions independently in line with the legal framework and with internationally agreed good practice. This annex sets out the performance the government expects from the CMA. It also describes how the CMA will fulfil the performance reporting requirements of the Enterprise and Regulatory Reform Act 2013.
- A.2 The CMA board is accountable for the success of the CMA as a whole and the delivery of the objectives set out in this document. The CMA's Chief Executive is the Accounting Officer for the CMA and is accountable to Parliament for its use of public money.
- A.3 The CMA's mission is to **make markets work well in the interests of consumers, businesses and the economy**. Its overall ambition is consistently to be one of the leading competition and consumer agencies in the world.
- A.4 The government expects the CMA to have a beneficial impact on consumers, on business behaviour and on productivity and growth in the economy, and to make robust decisions and implement effective and proportionate remedies.

The CMA will report annually on:

- the delivery of a target of direct financial benefits to consumers of at least ten times its relevant costs to the taxpayer (measured over a rolling three-year period);
- the ratio of direct financial benefits to consumers and costs for its principal tools; and
- its assessment of wider benefits of its work, for example on growth, business and consumer confidence in markets, compliance with competition law and deterrence of anti-competitive behaviour.

- A.5 Underpinning the CMA's mission are its five strategic goals:

1. Deliver effective enforcement

The government expects the CMA, in line with its overall mission, to:

- make strong and effective use of all its competition tools across a range of projects;

- select and conclude an appropriate mix of cases, including economically complex ‘effects’ cases and multiparty cartel cases, to maximise impact, end abuse and create a credible deterrent effect across the economy;
- seek to conclude more and swifter cases while maintaining fairness and without this being at the expense of lower financial penalties;
- ensure its decisions are robust to achieve a greater number of successfully concluded cases and investigations compared to the historical record; and
- increase the proportion of successful defences against appeals of its infringement decisions.

The CMA will report annually on:

- the number and nature of cases pursued under each of its enforcement tools, specifically:
 - the Competition Act regime;
 - the criminal cartel offence; and
 - merger control;
- the outcomes of cases, including the level of fines imposed;
- delivery of a target of an increased number of Competition Act cases against a rolling three-year average benchmark of previous OFT/CMA performance;
- delivery of a target of a reduction in the time taken to bring Competition Act cases to a final conclusion against a rolling three-year average benchmark of previous OFT/CMA performance;
- delivery of a target of an increase in the proportion of successful defences against appeals of its infringement decisions against a rolling three-year average benchmark of previous OFT/CMA performance;
- activities to ensure timely and appropriate responses to its information requests;
- comparisons of performance over time and against appropriate international benchmarks; and

- evaluation of the impact of at least two cases (including at least one market study or investigation).

2. Extend competition frontiers

The government expects the CMA:

- to identify markets where competition is not working well and tackle the constraints on competition in these areas;
- to assess specific sectors where enhanced competition could contribute to faster growth;
- to increase the number and speed of cases pursued under the markets regime;
- to work with sector regulators to stimulate a step change in the effectiveness of the concurrency arrangements, encourage the effective use of concurrent competition tools to tackle anti-competitive practices and promote competition; and
- to play a key role in challenging government where it creates barriers to competition.

The CMA will report annually on:

- the number and nature of cases pursued under the markets regime;
- the time taken to bring such cases to conclusion;
- the outcome of cases;
- its activities to promote competition in the regulated sectors and tackle anti-competitive practices, competition enforcement in regulated sectors and the operation of the concurrency regime;
- its impact on government policy including the government's response to recommendations made to it; and
- the longer-term impact of its interventions.

3. Refocus consumer protection

The government expects the CMA:

- to work with partners to make the new consumer arrangements work.

The CMA will report annually on:

- the number and nature of cases pursued;
- the speed with which it allocates cases through the National Trading Standards Board's National Tasking Group; and
- its interaction with other domestic and international enforcement agencies.

4. Achieve professional excellence

The government expects the CMA:

- to make robust decisions and implement effective and proportionate remedies to ensure processes proceed quickly, fairly, transparently and predictably, and to publish guidance on its procedures in its principal types of cases, including on its approach to administrative timetables.

The CMA will report annually on:

- the number of issues referred to the procedural officer and the outcome of these cases;
- performance against expected timetables in particular cases. Bespoke timetables will include the time taken from the opening of a CA98 investigation to the issue of a Statement of Objections and the time from Statement of Objections to final decision;
- the number and outcome of appeals against the CMA's decisions; and
- transparency indicators in accordance with government policy.

5. Develop integrated performance

The government expects the CMA:

- to develop its structures, strategy and practices so that it can demonstrate improvements in effectiveness and efficiency; and
- to develop procedures for ensuring that any burdens it imposes on business are necessary and proportionate.

The CMA will report annually on:

- its integration of its functions and development of its culture;

- activities to improve its practices and procedures; and
- its collaboration with partner agencies at home and abroad.

A.6 Success with these five goals will increase the CMA's impact and make it:

- a respected and influential independent authority in the UK and abroad.

The government expects the CMA:

- to maintain or improve on the high reputation of the OFT and CC.

The CMA will report on:

- the opinions of domestic and international stakeholders; and
- a great place to work.

The government expects the CMA:

- to retain and develop the high-quality people it needs.

The CMA will report annually on:

- the results of its regular staff survey.

ISBN 978-1-4741-2605-2



9 781474 126052