

Competition and Markets Authority Annual Plan 2014/15

Competition and Markets Authority
2014/15 Annual Plan

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FOREWORD

On 1 April 2014, the Competition and Markets Authority (CMA) became the UK's lead competition and consumer authority. This marked the end of a long and complex process of change – from initial proposal, through legislative process, organisational design and challenging implementation, to the organisation that we are proud to lead into its inaugural year. The CMA has a vital role to play in the UK economy through our many and varied roles and responsibilities, and whilst we are in no doubt as to the size of the task ahead of us, we are confident in our preparations and excited to take up the challenge of delivering real results for UK consumers and businesses.

This Annual Plan sets out how we propose to begin delivering on the strategy and vision that we have put in place for the CMA in our first year. These reflect prevailing economic conditions, the Government's aims and expectations for us as set out in its strategic steer, and the feedback we have received from consumer bodies, business representatives, regulators and other stakeholders throughout the UK. We have also included in this Plan a set of commitments that we will look to achieve in 2014/15. Achieving these commitments is not the limit of our ambition, nor will it inappropriately fetter our choices as to what cases and projects to take, but taken as a whole they provide a good yardstick by which our performance can be judged at the end of the year.

For those looking to measure the overall impact of the shift from the Office of Fair Trading (OFT) and the Competition Commission (CC) to the CMA, it should be noted that much of the work that the CMA will do in its first year is in continuing cases and projects begun in previous years by its predecessor organisations, and that there has been an emphasis on evolution rather than revolution throughout the reforms to the competition regime. There will not be a 'big bang' on 1 April – rather, the CMA will be building on what has gone before, striking a careful balance between carrying on important work begun by the OFT and CC and opening up new cases, projects and areas of work. Nevertheless, we are committed to achieving a further step up in performance as a consequence of the legislative reforms, the new institutional structures, the resources made available to us and organic improvements to our ways of working.

We will be looking to implement and to demonstrate these improvements as quickly as possible, not least because the CMA will be undertaking vitally important work from day one. Ultimately, the effect of our work on consumers is the key factor in everything that we do; we already know that this will include looking at how people pay for power and heat, how they bank and borrow money, and numerous other markets that impact directly or indirectly on people's day-to-day lives. And what we do will also have potentially far-reaching consequences for business, helping those

who deal fairly to thrive by protecting them from unfair competition and working to remove barriers to entry and expansion, whilst ensuring that those who break the law are subject to proportionate sanctions up to and including prison sentences for the worst kind of cartel activity. These are serious responsibilities, and we will treat them accordingly.

We are very grateful for the many constructive and helpful contributions that have been made in helping us to shape the CMA, including on this Annual Plan, and carrying this positive engagement forward is a high priority for us. We will look to be as open, transparent and clear as possible in setting out our choices and our decisions, and will continue to listen to partners and outside voices as we go forward. That said, there will inevitably be issues on which we take a different view from some parties – whether in business, Government or elsewhere – and we will not compromise our independence under any circumstances. Confidence in the impartiality and objectivity of the competition and markets regime is a key factor in the economic benefits that the regime brings, and we will do our utmost to maintain this confidence.

We would also like to thank the many staff from the CMA, the OFT, the CC, the Department for Business, Innovation and Skills, HM Treasury and elsewhere who have done so much to ensure that the CMA is ready to take on its roles and responsibilities. Whether through developing and implementing plans for the CMA, or ensuring that there was no let-up on vital work in the weeks and months before handover, an immense amount of hard work, commitment and skill has gone into the transition to the new competition and markets regime. Some of those responsible have now moved on to other projects, but we are delighted to be retaining a high proportion of staff from the OFT and the CC.

We hope that this Plan gives you a strong sense of our plans and priorities for the CMA's first year, and of what we want to achieve for the economy, for business, and for consumers. There is much hard work ahead of us, and we look forward to getting started.



David Currie
CMA Chairman



Alex Chisholm
CMA Chief Executive

1 INTRODUCTION AND ECONOMIC CONTEXT

The CMA must seek to promote competition, both within and outside the United Kingdom, for the benefit of consumers

— CMA Primary Duty, Enterprise and Regulatory Reform Act 2013 s25(3)

- 1.1 The CMA is a new organisation, created by the Enterprise and Regulatory Reform Act 2013 (the ERRA). The ERRA brought together two of the world's leading competition authorities, the Competition Commission (CC) and the Office of Fair Trading (OFT), to create a competition and consumer authority that will be greater than the sum of its parts – the Competition and Markets Authority (CMA).
- 1.2 The CMA formally came into being on 1 October 2013, when it published a draft vision, values and high level strategy. Following consultation, the CMA has confirmed its vision and revised its strategy in the light of the responses.¹
- 1.3 The CMA acquires its powers and responsibilities on 1 April 2014. In this our first Annual Plan, we set out what we plan to do in our inaugural year, and how we plan to deliver the objectives set out in our strategy. The Government has set out the importance it attaches to the work of the CMA in promoting growth and its expectations of us in its strategic steer.² This document includes an indication as to how we take account of this steer in developing our strategy and operational planning. The CMA Board is accountable for delivering the commitments set out in this plan, and has put in place a risk management framework to enable it to assess and manage risks to the delivery of those commitments.
- 1.4 As the successor to the OFT and CC, our first year in business will substantially involve progressing work initiated by or under way in both organisations. We intend to ensure that this work continues into the CMA as seamlessly as possible and that timely delivery is not jeopardised. As a consequence, our first year portfolio will look familiar (though it should be remembered that not all work commenced by the OFT will be in the public domain). We describe in the remainder of this document our intended balance between existing cases and new work in pursuit of each of our objectives.

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

² www.gov.uk/government/uploads/system/uploads/attachment_data/file/245607/bis-13-1210-competition-regime-response-to-consultation-on-statement-of-strategic-priorities-for-the-cma.pdf.

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 anticompetitive 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 it 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

- 1.5 The CMA will set its priorities in the light of its assessment of the risks to UK consumers and markets. These change with economic circumstances. In 2012 the OFT published a strategic assessment of longer-term risks to UK consumers and markets,³ designed as a foundation for the CMA. While the UK's economic situation has evolved since the assessment, entering a period of recovery, it still remains relevant in helping us to determine our strategic priorities and take decisions on what work to take forward.⁴ We propose to review it and produce a new assessment in the course of 2014.
- 1.6 Whilst indicators suggest that consumer confidence is returning, household incomes remain under pressure, with disposable income growing modestly and not consistently keeping pace with the rise in inflation. Higher prices for utilities, food and other consumer essentials and consequent rises in household expenditure sit in a climate that is also characterised by higher (unsecured) borrowing. Business confidence is also growing – though unevenly across the economy. Recent growth has been spread across the main sectors of the economy. Whilst household expenditure and investment are growing, both manufacturing and production sectors remain well below pre-2008 levels of output.⁵
- 1.7 The current economic climate therefore continues to give rise to risks which will inform the CMA's priorities. These include:
- The potential for cartel activity and other anticompetitive practices, particularly in markets with few firms or where demand is weak.
 - The potential for merger activity to reduce competition to the detriment of consumers.
 - The risk of unfair business practices arising or increasing where firms' profits are under downward pressure.
 - The potential for consumers making distressed purchases, being tempted by high risk products; the most vulnerable consumers being at the greatest risk.
 - Businesses being susceptible to anti-competitive and unfair business practices.
- 1.8 Other structural changes in the economy also have implications for the CMA's priorities. Among the most significant are the following:
- Thematic changes in markets such as the increase in online business and innovations in online and mobile technology bring benefits for many, but also potential risks and downsides. As consumers increasingly use the internet to

³ www.of.gov.uk/about-the-of/annual-plan-and-report/annual/strategic-assessment.

⁴ The strategic assessment is not an evaluation of all risks; other risks are likely to arise which might need to be addressed. This assessment is an input to the CMA's decisions in accordance with the prioritisation principles.

⁵ ONS Economic Reviews, October 2013 and March 2014

compare products and purchase goods and services, they also increasingly provide personal data online. Consumer worries about threats to privacy could therefore undermine willingness to shop online, and so it remains important to ensure customers can have confidence in online markets.

- In emerging sectors and business models more generally, it will be important to ensure we understand how technological and other developments are changing markets and the opportunities and risks those changes present for consumers, and to ensure that emerging and evolving markets are characterised by healthy competition. We will develop our understanding in these areas through research, casework and working with partners.
- In regulated sectors – which represent a significant section of the economy – promoting competition will be a priority, in collaboration with sector regulators.
- The increasing focus on market mechanisms in public service delivery – including in key areas such as health, education and social care – makes it essential that effective competition contributes to releasing the potential for productivity growth and service improvement.

1.9 The work of a competition and consumer authority can contribute to addressing many of these risks in a variety of different ways. We can prosecute criminal cartel activity and have a responsibility to enforce the prohibitions in the Competition Act 1998 (the Competition Act) against cartels, anticompetitive agreements and abuse of a dominant position, to apply Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU) as appropriate and to investigate mergers that may result in a substantial lessening of competition. We can choose to investigate other markets where we believe competition may not be working well. Chapters 3–7 set out what the CMA proposes to do in 2014/15 under each of its objectives.

1.10 The CMA will consider what issues to address with a mind to the Government’s strategic steer and to the known concerns of consumers. It will make its own independent decisions on markets to investigate. It has the opportunity to use a range of powers to address problems in markets that give rise to detriment for consumers. It will consider carefully with its partners as appropriate which tool best meets any need identified in any market.

Our commitment

During 2014/15 we will:

- conduct a new Strategic Assessment to help us identify priority markets for investigation or action
- conduct research into anticompetitive barriers to the development of e-commerce

2 RESOURCES, PRIORITISATION AND IMPACT

- 2.1 In the 2013 Spending Round the Treasury awarded CMA a Resource Departmental Expenditure Limit (Resource DEL) of £51.2m and a Capital Budget of £1m for the financial year 2014/15, the Authority's first year of operation. The Resource DEL includes a ring-fenced budget of £5.1m to cover depreciation and specific policy initiatives and places a limit of £18.6m (including £1.1m of depreciation) on administration expenditure.
- 2.2 In addition the Department for Business Innovation and Skills (BIS) has agreed to provide CMA with top up funding of £3m in 2014/15. In the Autumn Statement 2013 the Chancellor of the Exchequer announced that CMA's Resource DEL would be increased by £12m in 2014/15 to allow the authority to accelerate its work relating to cartels and regulated markets. The CMA will therefore commence its first year of operation with a Resource Budget of £66.2m with £5.1m ring-fenced plus a Capital Budget of £1m.
- 2.3 As Accounting Officer the CMA's Chief Executive is personally responsible for safeguarding the public funds for which he has charge, for ensuring propriety and regularity in the handling of public funds; and the day-to-day operations and management of the Authority.
- 2.4 The CMA has set a budget for 2014/15 within the overall funding limit available. Personnel costs represent approximately three quarters of the CMA's non-ring-fenced budget. Over 80 per cent of the CMA's personnel either work directly on front line projects or support those who do. We will report in more detail on the use of the CMA's resources in our Annual Report at the end of the year.
- 2.5 In this, our first year, the cases and projects inherited from the OFT and CC will determine a significant proportion of our portfolio of work and therefore the deployment of our resources. This existing portfolio was selected by the OFT Board⁶ in line with its Prioritisation Principles⁷ which set out the factors that are considered and balanced when making decisions on priorities: impact, strategic significance, risks and resources. The exact number of cases or projects we might expect to start in the coming year cannot be accurately predicted, as each case is subject to an individual assessment of evidence and priorities.⁸ The CMA will keep the balance of cases across sectors and across tools under review. The assumptions about case volumes in this Plan

⁶ The CC did not have discretion to select its own cases but undertook work referred to it.

⁷ www.offt.gov.uk/shared_offt/about_offt/oft953.pdf.

⁸ Further, the outcome of current litigation is unknown; this may have implications for the availability of resources for other priorities.

are based on our current knowledge of markets and of the CMA's available resources. Alongside our budget, we have agreed a performance framework⁹ with the Government which sets out what we expect to achieve with the resources we have.

2.6 At its heart is an ambitious and world-leading target for benefits to consumers from our activities. For every £1 we spend, we aim to generate £10 of direct benefits for the consumer. We will assess the direct benefits of our work regularly,¹⁰ but recognise that it also has significant, though hard to quantify, indirect benefits. Our approach to measurement of impact includes forward-looking impact estimation as we develop proposals for cases to pursue and evaluation after the event. Our approach to evaluation, which draws on the best academic thinking and practical experience of competition and consumer interventions, has three strands:

- Estimating the impact of each project as it completes.
- Evaluating projects to identify the costs and benefits, and lessons learned.
- 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.

2.7 We will publish the results of our rolling programme of evaluation in our Annual Report and elsewhere. In addition, the Performance Framework obliges us to track our progress against a variety of measures designed to capture Government's objectives for reform. We will report on these, too, in our Annual Report.

Our commitment

During 2014/15 we will:

- Deliver at least a 10:1 benefit to cost ratio (measured across all our work, over a rolling three-year period)
- Report on our activities and on our achievements as required by the performance framework

⁹ See Annex A.

¹⁰ The CMA will measure its performance against the 10:1 target in a manner consistent with the approach currently used by the OFT and CC, which has been independently reviewed and is both robust and internationally well-regarded.

3 DELIVER EFFECTIVE ENFORCEMENT

The central importance of enforcement

- 3.1 Enforcement is central to our purpose and our function – delivering a first-class enforcement regime sits at the heart of the rationale for our creation. Targeted and effective enforcement delivers results beyond individual cases – it builds a platform for greater compliance and understanding of the law, and importantly deters anticompetitive behaviour. The long-run effects are felt in all sectors and contribute to building a strong economy.
- 3.2 We use the term enforcement in this context to comprise competition enforcement (including prosecution of criminal cartel activity and enforcement under the Competition Act), consumer law enforcement and merger control. Our work on enforcement of consumer protection law is described further in Chapter 5.
- 3.3 We also regard support for those working to achieve compliance with the law – via published guidance and practical materials and tools for businesses and their advisers – as an important complement to enforcement activity.

Our competition enforcement portfolio

- 3.4 On 1 April 2014 as the CMA assumes its powers we will inherit 11 live competition enforcement cases from the OFT. These comprise investigations of possible criminal cartels and cases under the Competition Act that have passed the section 25 threshold. Our competition enforcement portfolio currently includes cases in industries including financial services, fuels, pharmaceuticals and construction products.
- 3.5 Our strategy sets out our longer-term ambitions. By definition these will not all be achieved in our first year. In that first year we will continue and complete a proportion of the work we have inherited and lay the foundations for our future improvement.
- 3.6 We will progress these ‘in flight’ cases quickly and effectively and ensure that they have the maximum impact on deterrence and compliance incentives, and ultimately the welfare of consumers. That means ensuring that our decisions are robust and well evidenced and withstand scrutiny, and that the messages from these cases are well and widely understood across the economy. We will gather and analyse intelligence and insight from a variety of sources to identify where enforcement may be targeted to have the greatest beneficial impact. And we will ensure that our portfolio of enforcement work comprises those cases which best meet our prioritisation criteria, including their likely

deterrent impact, and includes a balance of different kinds of cases in different sectors.

- 3.7 Alongside active enforcement, we will dedicate staff resource to help businesses abide by the law through advocacy, guidance and engagement with representative bodies, and by making available practical tools and materials. This support is particularly important for smaller businesses which do not have access to the same levels of internal legal advice on competition and consumer law.

Merger control

- 3.8 At the time when the CMA assumed its powers, four mergers were undergoing second phase scrutiny at the CC and around 30 were under consideration at the OFT. It will also inherit the responsibility for implementing remedies in any cases where the CC has determined that they are necessary.
- 3.9 Under the Enterprise Act 2002 (as amended by the ERRA) 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.
- 3.10 From 1 April 2014 the CMA will be implementing changes to the merger procedures of its predecessors, as required to reflect the procedural changes introduced by the ERRA, and incremental improvements to policies and procedures previously used by the OFT and CC. These changes are reflected in the guidance on jurisdiction and procedure which the CMA has recently published.¹¹
- 3.11 Notification of a merger to the CMA is voluntary, which means that parties may decide not to notify a merger which the CMA has the jurisdiction to review, for example where they believe that a merger does not raise competition concerns. The voluntary nature of the UK merger regime is unusual internationally and highly prized by business as it ensures that mergers that raise no competition concerns are not unduly held up by regulatory scrutiny. The CMA may seek information about non-notified mergers that it becomes aware of through other routes (such as its own monitoring of market activity or third party complaints). In order to deter anti-competitive merger activity while preserving the benefits of the voluntary regime, the CMA will adopt a balanced and targeted approach to investigating non-notified mergers.

¹¹ www.gov.uk/government/publications/mergers-guidance-on-the-cmas-jurisdiction-and-procedure.

Our commitments

During 2014/15 we will:

- Ensure that we commit necessary resources to prosecute effectively the criminal cartel offence, concluding, or commencing proceedings in respect of, at least one criminal cartel case
- Build our intelligence, investigation and enforcement capacity to enable us to increase the number and speed of cartel cases that we are able to pursue, both criminally and under CA98
- Launch at least four new CA98 investigations where we have the requisite evidence
- Implement operational and procedural reforms for CA98 cases thereby improving the robustness and speed of decision making
- Develop and embed procedures for the application of new powers, such as interim measures and compulsory interviewing
- Keep the operation of our prioritisation principles under review to ensure that our choice of competition enforcement cases is balanced and focused on maximising impact
- Implement specific changes to the mergers procedures of our predecessors, including:
 - Delivering all merger cases to the new statutory timescales introduced by the ERRRA
 - Delivering further improvements to the speed and clarity of the CMA's mergers procedures, such as the revised Phase 1 decision-making system, the procedure for accepting undertakings in lieu of reference and the transition from the first to second phase of merger control
 - Utilising our new powers to prevent or reverse pre-emptive action through Interim Measures, in appropriate circumstances
 - Utilising the CMA's formal information-gathering powers and associated ability to impose financial penalties for failure to comply with such powers, in appropriate circumstances
 - A more targeted approach to investigating non-notified mergers
- Conduct benchmarking research to understand businesses' awareness and understanding of the law, using the result to plan and deploy a targeted compliance strategy that dovetails with enforcement activity

4 EXTEND COMPETITION FRONTIERS

Competition across the whole economy

- 4.1 Maximising the potential of competition for the benefit of consumers and the economy requires more than just enforcement activity. In some markets the structure of markets or conduct of suppliers or customers can mean that competition is ineffective even where there is no breach of the Competition Act or consumer protection law. The UK's markets regime allows us to look at specific markets or practices, rather than individual entities, and to consider how competition can work better in the interests of customers whether business customers or consumers. The Government has made some changes to the markets regime to broaden its scope and speed up its application.
- 4.2 Recognising that many regulated markets are characterised by high levels of persistent market power, the Government has also made some changes to the concurrency regime to ensure that competition law is applied more consistently in these sectors. The CMA, working with all the UK's sector regulators, has established the UK Competition Network to encourage the spread of competition and the use and effectiveness of competition enforcement in regulated sectors.
- 4.3 The CMA will also be able to use its expertise, knowledge and insights on how competition can work to advise others, including government, on how competition can work for the benefit of public service users and taxpayers.

Our markets portfolio

- 4.4 On 1 April 2014, as the CMA assumes its powers it will inherit a full portfolio of existing markets work from the CC and the OFT. This will include a market study into residential property management and three market investigations in the private motor insurance, payday lending and private healthcare sectors. It will also inherit the responsibility for implementing remedies from recent CC market investigations including the audit and cement markets.
- 4.5 We have announced a programme of work in the retail banking market, comprising the completion of a market study on SME banking and a short update of the OFT's review of competition in the Personal Current Account market. Separately, Ofgem, the OFT and the CMA have published a joint review of competition in the energy market, prompting an Ofgem consultation on a Market Investigation Reference to the CMA. We will follow this up during 2014/15 as appropriate following the Ofgem consultation.

- 4.6 We will complete the ‘in flight’ studies, which are subject to the Enterprise Act regime and timescales, as quickly as is consistent with rigour. Working with consumers and their representatives, regulatory bodies and others, we will identify the sectors of the economy where the most significant risks of detriment to consumers are to be found and those where our intervention has the greatest prospects of benefits for consumers. These may include new or rapidly changing markets where business models are evolving, markets where new ways of understanding consumer behaviour have identified both competition problems and potential solutions; and markets for public services. Using our own intelligence and insights from businesses, consumers and their representatives and others to identify areas of concern, we will develop a strong pipeline of work projects in these areas. We will use our prioritisation principles¹² to ensure that our portfolio of markets work includes a balance of different kinds of studies in different sectors, and deliver those cases in the shorter timescales required by the legislation.
- 4.7 We will work with our sector regulator partners in the UK Competition Network¹³ extending the potential impact of competition across the regulated sectors in a different way from the past. The CMA will be obliged to publish an annual assessment of competition in the regulated sectors, and has published a ‘baseline’ annual assessment alongside this Annual Plan. The baseline report it has prepared will set out the agenda for the UKCN in its first year of operation in more detail. When working with sector regulators the CMA will take due account of their priorities and obligations.

Regulatory references and appeals

- 4.8 The CMA will inherit the CC’s responsibilities for references and appeals against the decisions of certain regulators,¹⁴ including new responsibilities conferred by the Health and Social Care Act 2012, the Civil Aviation Act 2013 and the Financial Services (Banking Reform) Act 2013. Regulatory references and appeals have historically comprised up to a quarter of the CC’s workload.
- 4.9 It is not possible to predict which (if any) decisions of which (if any) regulators will be appealed to the CMA. However, significant regulatory decisions in sectors including telecommunications, water, energy, rail and aviation are expected in the course of 2014; it is at least possible that one or more may be

¹² <https://www.gov.uk/government/consultations/cma-prioritisation-principles>

¹³ The UKCN has published a Statement of Intent setting out how it proposes to operate: www.gov.uk/government/uploads/system/uploads/attachment_data/file/262996/UKCN_Statement_of_Intent_FIN_AL.pdf.

¹⁴ 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.

appealed or referred to the CMA. If so, the CMA will conduct any case in the same way as the CC, consistently with its guidance on the conduct of such cases. In appointing groups to and staffing such cases, the CMA will ensure that there is no conflict between its role as an appeal body and any role supporting the relevant sector regulator in its exercise of its concurrent competition powers.

- 4.10 The Government consulted on the future of the regulatory appeals regimes in the course of 2013.¹⁵ It has yet to announce any decisions arising out of that review. Should it do so in 2014/15, the CMA will work with the Government to implement any reform(s) the Government decides to make.

Our commitments

During 2014/15 we will:

- Ensure that the full OFT and CC portfolio will be carried over to the CMA without disruption during the transition and the cases concluded within statutory time limits
- Implement remedial action (where appropriate) within the statutory time limits
- Launch at least four new calls for information, market studies or market investigations in the course of this year where we have the requisite evidence, and meet all the statutory deadlines on new studies launched in 2014
- Based on our work, make recommendations to the Government on the impact of its activities on competition in at least two sectors
- Determine all regulatory references and appeals we receive fairly and meeting statutory deadlines

¹⁵ www.gov.uk/government/uploads/system/uploads/attachment_data/file/229758/bis-13-876-regulatory-and-competition-appeals-revised.pdf.

5 REFOCUS CONSUMER PROTECTION

The CMA's consumer protection role

- 5.1 The creation of the CMA forms part of an important refocusing of UK consumer protection. We will be one of many bodies with a role in ensuring that consumers are protected and able to play their part in stimulating competition and making markets work well. Our role in enforcement will be to pursue complex and precedent-setting cases where we can expect to achieve an impact across markets. The CMA's consumer role will complement and reinforce the effect of competition action taken to improve markets and to support economic growth, by addressing problems where competition enforcement alone does not, or cannot, make a market work well for consumers. Alongside our enforcement work, we will lead or influence policy development – both domestically and internationally, in areas where we have specific responsibility such as unfair terms or where we have particular expertise.
- 5.2 Working effectively and building strong relationships with our consumer protection partners, such as local authority Trading Standards Services and the Citizens Advice Service, together with the sector regulators, will ensure that the consumer protection regime remains robust and effective. We will work together to identify areas of detriment to consumers and assess whether, how and by whom they might best be addressed.
- 5.3 Our consumer protection responsibilities go further than enforcement – as with competition enforcement, our effectiveness also relies on 'softer' tools which help to educate and promote compliance and understanding of the law. We have a particular responsibility to do this in relation to unfair contract terms legislation where we have lead responsibility for providing guidance to business. Where appropriate we will also provide advice to businesses where we have conducted a market study or other in-depth analysis of business practices in a particular sector. We will work alongside our colleagues across the consumer protection landscape to maximise the impact of our contribution.

Our consumer enforcement portfolio

- 5.4 Our priorities start with working with enforcement and education partners such as the National Trading Standards Board, the Trading Standards Institute, Citizens Advice, and other regulators to ensure that the reformed arrangements are understood and effective. In particular we will work through the Consumer Protection Partnership, and using intelligence from consumers, their representatives and others to ensure that areas of significant consumer

detriment are identified and prioritised by the most appropriate organisation and that the roles of different partners are widely understood.¹⁶ We will work with the Trading Standards Services through the National Tasking Group to ensure that cases are allocated appropriately between the Trading Standards Services and the CMA. Using our existing knowledge and our markets experience, we will work with all partners to develop capability, share intelligence and coordinate activity. We will work closely with the sector regulators and chair the Consumer Concurrency Group.

- 5.5 In an increasingly global environment, working with our partners outside the UK, across Europe and more widely will be important to ensuring that we maximise our beneficial impact. We will be working both at a practical level, for example such as through our membership of the European Commission Internet Expert Group, ICPEN and the OECD, as well as acting as the UK's Single Liaison Office under the EU Consumer Protection Co-operation Regulation. We will also work more strategically, to help establish consistent priorities, sharing expertise and identifying cases where working collaboratively can deliver better outcomes for consumers.
- 5.6 Our portfolio in 2014/15 will include the cases and projects initiated by the OFT before 1 April 2014. We will follow up the OFT's work on online games, in which the OFT gave the industry until 1 April to ensure that it was complying with consumer law and will also monitor pricing practices in the furniture and carpets sector following the commitment of parties to the OFT's investigation to change their practices. We will also continue the OFT's work in the lettings sector, where we will publish guidance for the lettings profession following the OFT's consultation.
- 5.7 We will use our intelligence gathering capabilities to ensure that our consumer portfolio includes the complex and/or precedent-setting consumer protection cases that we are best equipped to take, that best complement our competition powers and that will maximise our impact. Our prioritisation criteria will help us to choose in which sectors to pursue cases and which powers to use. In delivering this work we want to ensure we understand the consumer perspective and that this is reflected in the work we do right across our portfolio. We will do this in a number of ways. We will continue to engage with consumers on our cases to understand their behaviour and concerns in specific markets through qualitative and quantitative research, by listening carefully to the views expressed to us, and ensuring that the evidence on which we base our decisions is available on our website and in our reports. In

¹⁶ The CPP published its future priorities in November 2013: www.gov.uk/government/uploads/system/uploads/attachment_data/file/252730/bis-13-1267-consumer-protection-partnership-future-priorities.pdf.

addition, we will establish a network of consumer experts, representatives, and other stakeholders in the consumer field who can help us to understand the consumer experience and integrate this type of thinking across our portfolio.

- 5.8 Alongside our CPP partners we will work with business to ensure that consumer protection law is understood and complied with. This includes engaging with business in sectors in which we have pursued cases or other work to make sure the implications of the case are understood, and that businesses have the information and guidance they need to comply with the law.

Our commitments

During 2014/15 we will:

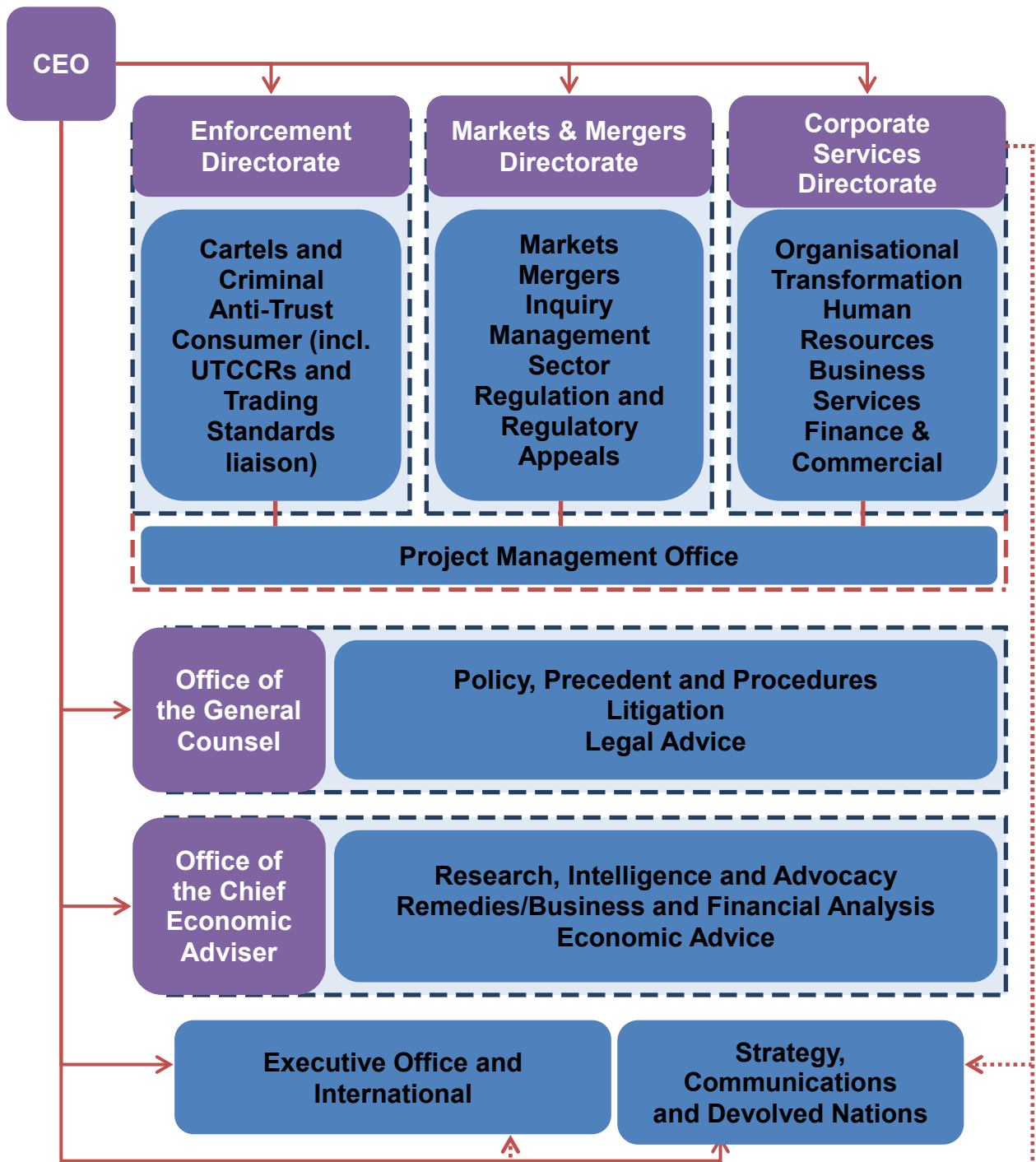
- Initiate three cases or projects that focus on markets where there is evidence of widespread or endemic practices that negatively impact on consumer decision making or choice
- Conclude our cases swiftly, either by agreement or by proceeding to litigation; we will aim for the majority to be concluded within 18 months of being opened
- Enhance our understanding of consumer issues and concerns by engaging with consumers in a range of ways, including by establishing a network of consumer experts, representatives, and other 'consumer minded' stakeholders
- Agree a set of protocols and ways of working with our national partners to ensure that the regime operates effectively to the benefit of consumers, and there is clarity on how and by whom cases and issues will be pursued
- Continue to play a leading role in the development of consumer protection internationally, particularly in Europe, working with our partners in e-commerce and on unfair terms
- Work with partners in developing a better awareness and understanding of consumer protection law among business and others
- Establish a network of consumer experts, representatives, and other stakeholders who are in the consumer field who can help us to understand the consumer experience

6 ACHIEVE PROFESSIONAL EXCELLENCE

- 6.1 Our case management needs to be efficient, effective, transparent and fair, consistent with our guidance and with the standards expected of us by others. Our legal and economic analysis also needs to be of a consistently high standard. In achieving these aims, we must also avoid imposing burdens on business that are unnecessary and counterproductive.

Structures

- 6.2 The structure and working practices of the CMA are designed to promote flexibility, collaborative working and professional excellence. We will do most of our work through multidisciplinary project teams, managed through a matrix framework that ensures proper accountability for delivery of timely and robust decisions and for the professional quality of our work. The CMA will also develop a consistent approach to managing projects which it will then apply across its work. This will be based on the proven approaches employed by the OFT and CC.
- 6.3 The CMA has three Groups, led by Executive Directors: Enforcement, Markets & Mergers and Corporate Services (see below). These will be supported by an Office of the General Counsel and an Office of the Chief Economic Adviser. The Office of the General Counsel and Office of the Chief Economic Adviser will be responsible for the legal, economic, business and financial advice and analysis provided to case teams and inquiry groups, including appropriate and rigorous quality assurance. The Offices will also develop programmes to facilitate the continuing professional development of staff in those professions. They will form colleges of professional expertise across the CMA.



Professional groups

- 6.4 All staff will belong to a profession, and the Head of each profession will be responsible for the professional development of those staff, including having substantial input into decisions on which projects they work on and the roles they play. These arrangements will not be confined to economists, lawyers, business and financial advisers and investigators but will also apply to those involved in project management and delivery and other professions including HR, communications, finance and IT.

Our commitments

During 2014/15 we will:

- Review and refine as appropriate our arrangements for quality assurance of the analytical and legal work on projects, including the checks and balances we apply, to improve the rigour and robustness to challenge of our work still further
- Draw on the expertise of the CMA panel and of external academic panellists to enhance the quality of our casework and develop the capabilities of our staff
- Review our approach to litigation to determine the best model for the CMA to use in particular circumstances
- Develop and implement a common approach to delivering projects effectively, building on the proven approaches of the OFT and CC
- Develop programmes of professional development across all the professions in the CMA to help staff to achieve the highest standards appropriate to their profession

7 DEVELOP INTEGRATED PERFORMANCE

- 7.1 We will integrate staff and members from all backgrounds through the design of the organisation and integrate the work both of different units and professional groups within the CMA with each other, and of the CMA with that of its external partners.
- 7.2 The CMA will be combining staff from the OFT, staff from the CC and staff new to the competition authorities.
- 7.3 Externally, working closely with all the bodies with which we share powers will be vital to integrating our tools to ensure that the competition and consumer regimes can deliver more than the sum of their parts and that we minimize duplication and other unnecessary burden on business.
- 7.4 The CMA will engage with and listen to consumer groups, businesses and their representatives, and other interested organisations to gather information, intelligence and feedback that will inform our work and processes. We will work in partnership with such intermediaries to reach their audiences, connecting with and influencing businesses and consumers to make markets work well. We will also work closely with the Government devolved administrations and with public bodies to influence their approaches to competition and markets and to advocate the contribution of well-framed competition to achieving policy objectives.
- 7.5 The CMA is a UK institution, with a remit that extends to Scotland, Wales and Northern Ireland. We recognise that devolution has led to different policy approaches and we therefore have established representatives in Edinburgh, Cardiff and Belfast. This capacity ensures that as an organisation we are able to gather insight and understanding of the particular circumstances of the Nations and also promote and explain the work we do to stakeholders, partners and consumers more effectively across the UK. We will hold our CMA Board meetings in each of the three capitals over the next two-year period, starting with Edinburgh in June 2014.
- 7.6 Internationally, the UK is one of the world's leading competition regimes. As such we have a role to play in coordinating our actions with those of agencies in other countries and, where appropriate, helping other jurisdictions to develop robust systems. In a world of increasing internationalised business, our effectiveness is linked to the effectiveness of other regimes in other jurisdictions. We will work constructively with international bodies and partner agencies, building on the roles the OFT and CC have played.

- 7.7 On the consumer side, we will play a full and active part in the Consumer Protection Partnership and work closely with enforcement partners such as the National Trading Standards Board, the Trading Standards Institute and Citizens Advice Service. And on the competition side, we have been given a clear remit to work with sectoral regulators to make better use of competition policy and enforcement across the markets that they deal with.

Matrix-based organisation

- 7.8 Internally, we will make the most of our staff by combining different professional approaches and backgrounds into effective multidisciplinary teams. A matrix-based organisation allows us to harness the skills of our staff and apply these to areas of work where they are most needed, quickly and in a coordinated way. By doing so we will also enhance the skills and experience of our staff, investing in them as individuals and building resilience and a greater organisational capability. The Project Management Office will help us staff and manage projects in a way that both meets their needs for relevant skills and knowledge and contributes to developing individuals.
- 7.9 A CMA Academy will aim to provide staff with professional training to develop their skills; delivering a standard induction for all CMA staff (tier 1); core professional training in each of the main areas of work (tier 2) with an option to attend training in an area outside of the work staff are currently undertaking; and advanced training in specialist areas (tier 3).
- 7.10 Under the auspices of the UKCN we will continue to collaborate with sector regulators to share learning and best practice.

Effective talent management

- 7.11 We want the CMA to be a great place to work and an organisation that offers interesting work and career development opportunities for our staff. We will identify, grow and retain talent, aligning our talent approach with our performance management systems, development plans, recruitment processes and our employee offer.
- 7.12 We will take advantage of civil service resources including the Toolkit and Competency Framework, and employ 360° feedback as part of Performance and Development Reviews, professional development and career frameworks, talent identification, targeted Leadership and Management development, technical and specialist training and Succession Planning. These will help us develop capable and committed staff in the right roles at the right time across the organisation.

Our commitments

During 2014/15 we will:

- Design and implement an organisational transformation programme to create a cohesive organisation, embed shared values and encourage integrated ways of working
- Work in multidisciplinary teams which blend people with different professional and organisational backgrounds
- Establish a Project Management Office and resourcing arrangements that ensure projects are staffed and managed in line with their needs and the skills, knowledge and aspirations of CMA staff
- Conduct and respond to an annual Civil Service Staff Survey
- Work with EU and international colleagues to encourage competition and open markets in the interests of UK consumers and businesses

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 annexe 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.
- 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 anticompetitive 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
- 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
 - 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
- 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 anticompetitive practices and promote competition
- 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 anticompetitive 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
- 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
- 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

- 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
- to develop procedures for ensuring 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
- 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
- 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

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