

# CMA

# Annual Plan 2015/16

# consultation

Summary of responses

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## 1. Overall

- 1.1 The feedback received during consultation has revealed wide support for the Competition and Markets Authority's (CMA) 2015/16 draft Annual Plan (the Plan).
- 1.2 Respondents were supportive of the CMA's commitment to maintain a consistent focus on consumers throughout the life cycle of projects and commended the shift toward intelligence-driven, evidence-based interventions, which recognise the unique features of markets in different parts of the UK.
- 1.3 Respondents welcomed the new arrangements brought about through the Enterprise and Regulatory Reform Act 2013, commenting that after a year of growth and capacity building, 2015/16 should be the year that the CMA begins demonstrating that the streamlined regime can deliver swifter, more effective and efficient outcomes than the old regime.
- 1.4 Respondents also requested further information on the CMA's positive impact assessment and the methodology for how the ratio of direct financial benefits to costs of principal tools is calculated.
- 1.5 While eight formal responses is relatively small in absolute terms, they came from organisations that between them represent significant numbers of citizens, consumers and businesses. These formal responses are also complemented by group and individual discussions during the consultation period with representatives of other organisations.

## **2. Enforcement**

- 2.1 A number of responses supported our commitment to launching a minimum number of new cartel, criminal cartel, consumer protection and competition enforcement investigations, and recognised the benefits of the CMA's intelligence-led approach to these investigations.
- 2.2 A business respondent cautioned about setting targets in these areas, commenting that investigations should only be opened where there is a clear problem, given the substantial costs borne by businesses undergoing studies and investigations.

### **The CMA view**

- 2.3 Throughout 2015/16 the CMA will continue to develop its intelligence-led approach to case work. With the benefit of additional funding, we have enhanced our digital, forensics and intelligence capabilities, to inform intelligence gathering and delivery of our work. The CMA has recruited staff with extensive intelligence and investigation backgrounds who are assisting us to further refine investigation processes. These capabilities have already been carried forward in a number of investigations and will continue to be demonstrated as our intelligence-related capabilities continue to grow.
- 2.4 We recognise the risk that setting numerical targets distorts our priorities. However, the CMA regards it as appropriate for a body which intends to pursue an ambitious agenda to give an indication of what it expects to achieve. We have ensured that committed case target numbers balance ambition with careful consideration of our capabilities, and we have emphasised in the final version of the Plan that we will only pursue cases where the evidence supports doing so and where cases are consistent with our prioritisation criteria. Although the CMA does have discretion in relation to some aspects of its work, we are also required to investigate cases which meet certain statutory criteria, or where a matter is referred to us by one of our consumer protection or regulatory partners.
- 2.5 The CMA is committed to delivering a target of direct financial benefits to consumers of at least 10 times its relevant costs to the taxpayer. This is measured over a rolling three year period, as the ratio of direct financial benefits to consumers to costs of the CMA's principal tools. The methodology for this assessment is detailed in the CMA's annual impact report which is due for publication after the end of the 2014/15 financial year.

### **3. Consumer protection**

- 3.1 Feedback indicated broad support for the CMA's commitments to put consumers at the heart of work and projects, and to launch a minimum of three new consumer protection cases or projects in 2015/16.
- 3.2 When determining its priorities, respondents noted that it is also important that the CMA reflects those issues that may cause a large amount of detriment to some groups of consumers, as well as issues that may not have such a high level of individual detriment, but collectively can result in a large impact on consumers – as well as the wider confidence in the industry or sector. Feedback suggested that one of the strengths of the new landscape was the creation of the CMA with its dual competition and consumer role and that the CMA should take a broad interpretation of its remit. It was suggested that the CMA could optimise its role by intervening to protect consumers in areas where it is clear that there are gaps in resources or expertise elsewhere in the consumer landscape.
- 3.3 Respondents gave support to the CMA's commitment to put consumers at the heart of everything it does and to embed this into the CMA's thinking and processes across the organisation, from inception of work to decisions at the board level. One respondent stated that such consumer focus should feed through into the CMA's European Union (EU) and international work, including its role within the Consumer Protection Co-operation Network and International Consumer Protection Enforcement Network (ICPEN).

#### **The CMA view**

- 3.4 The CMA is committed to undertaking an active and central consumer protection role in the consumer landscape. We will continue to work closely with other agencies to ensure that, as a partnership, we make a substantive impact in preventing and addressing consumer detriment. The CMA respects the government's decisions on the allocation of funding and resources in the new consumer landscape but does not interpret its role narrowly. Within the settled framework we will work with our partners to build a strong platform upon which we can co-deliver to achieve our shared objectives.
- 3.5 We note that our intelligence-led approach is underpinned by the application of a consumer lens across all of our work, which ensures that consumer issues influence our decision making on cases and projects. This approach helps to embed a robust and holistic view of consumer issues across all of the CMA's work and maintain the consumer at the heart of what we do.

## 4. Compliance

- 4.1 Feedback from the business community commended the CMA's commitment to external engagement and encouraged the CMA to continue to develop relationships with stakeholders across a range of areas, including businesses.
- 4.2 One respondent stressed the importance of achieving an effective balance between tough enforcement action and measures aimed at ensuring compliance by businesses, and welcomed the CMA's commitment to further invest in its compliance programme. It said that the CMA should also work closely with regulators and enforcement bodies, particularly the Trading Standards Institute which now has substantial responsibility for developing industry guidance.
- 4.3 Another respondent commented that small businesses may disproportionately suffer the burdens of regulation. The CMA should embed a 'think small first' approach in relation to its guidance activity. One possible approach could include a tailored suite of guidance and compliance work. Respondents also noted that the Annual Plan should articulate how it will roll out compliance messages in all the nations of the UK.

### **The CMA view**

- 4.4 The CMA sees enforcement and compliance as necessary complements in achieving impact. We understand the challenge of compliance for business, and in particular for small businesses. As noted in the Annual Plan, the CMA will further develop its compliance programme during 2015/16, building on our current compliance strategies through closer engagement with businesses and their representative groups.
- 4.5 As part of this we plan to develop a tailored suite of compliance for small businesses, focussing on competition law and unfair contract terms, ensuring that compliance tools also reflect changes brought about through the anticipated Consumer Rights Act currently awaiting Royal Assent.

## 5. Markets and mergers

- 5.1 Respondents expressed general support for the CMA's ongoing investigation into the energy and banking markets. One respondent said that, when determining any interventions necessary to stimulate effective competition, the CMA should ensure these support and complement the existing work of regulators in these markets.
- 5.2 A respondent also suggested that the CMA, along with other sector regulators, should carry out routine cross-economy analysis of the state of competition and consumer protection in core markets, building on its baseline annual report on concurrency.
- 5.3 Representatives for the small business community argued that there should be more emphasis on the relationship between small businesses and the CMA in the Plan. They said that the CMA should have a role in helping to make sure that the markets where small businesses are acting as consumers are generally competitive and deliver value for money for small business customers. This means ensuring that markets are 'level playing fields', particularly where small businesses have a poor bargaining position due to limited purchasing power or where there are restrictive barriers to entry.

### The CMA view

- 5.4 In line with its established practices and guidance, the CMA will consult on any remedies emerging from its market investigations to ensure they are suitable to address the competition issues identified.
- 5.5 The CMA's Strategic Assessment, published in November 2014, is a cross-economy assessment of risks to consumers, the efficient functioning of markets and their contribution to economic growth. Its primary objectives are to inform our one to three year priorities and to help focus our pipeline of discretionary work. We also routinely gather and analyse a wide range of data and other information as part of our broader intelligence-gathering activities to help identify areas where competition may not be working well. As noted in the Plan, we will continue to develop our approach to identifying areas of the economy where competition could work better. However, we note that there are challenges in providing a snapshot of the state of competition across the whole economy at any particular point in time, given the many different variables involved and the need for in depth analysis to consider how competition is working in any particular market.
- 5.6 The CMA's mission is to make markets work well in the interests of consumers, businesses and the economy. In intervening in markets, our work



often benefits small businesses by removing barriers to entry that favour incumbents, or by improving competition in markets for which small businesses are also customers. This is demonstrated for example, in our investigations into the energy and banking sectors.

## **6. Partnership and advocacy**

- 6.1 Overall, while the Plan demonstrates an ongoing commitment to external engagement, respondents sought further clarity on the CMA's plans to work with external stakeholders. Feedback also noted that there is some uncertainty within business communities as to the exact nature of the CMA's relationship with the UK Competition Network and the UK Regulators Network. Similarly one respondent said that it is key that the CMA's role is well publicised and contact details are made clear to relevant industry associations in the devolved nations.

### **Consumer partners**

- 6.2 Stakeholder responses recognised the value of the CMA's close partnership working within the Consumer Protection Partnership in the new consumer landscape. There was also support for the CMA's commitment to take a proactive role in the Consumer Protection Partnership Network and encouragement for it to make full use of its role as Chair of ICPEN.

### **Concurrent regulators**

- 6.3 Representatives of the business community suggested that the CMA should ensure that the enhanced concurrency arrangements are 'pushed forward as far as possible'. Although the Annual Plan refers to the positive progress made on implementing the new concurrency arrangements, further co-operation under the new arrangements may require a culture shift within the regulatory bodies and the CMA should be mindful of this.

### **The CMA view**

- 6.4 The CMA welcomes enthusiasm for the new concurrency arrangements, which seek to enhance competition for the benefit of consumers in the regulated sectors. Since the new arrangements took effect in April 2014, significant progress has been achieved, which includes strong co-operation on competition matters through the newly established UK Competition Network (including two of the CMA's major market investigations, into retail banking and into energy), enhanced bilateral links and memoranda of understanding between the CMA and sector regulators, information sharing, and ongoing advice on case work. Our work with partners in the regulated sectors evidences a serious commitment to achieving competitive outcomes, and demonstrates that these efforts are beginning to yield positive results.

- 6.5 As the CMA is not a regulator in the same way as, for example, the Financial Conduct Authority or the Civil Aviation Authority, we have ‘observer status’ in the UK Regulators Network. The extent of our remit is that we observe its meetings, and offer advice on matters where we have expertise.
- 6.6 In 2015 the CMA will assume its presidency of the ICPEN, comprising 53 nations. Through this role we aim to achieve positive outcomes for consumers across the world, building on the work of previous presidencies.
- 6.7 We will build on our 2014 baseline concurrency report by publishing, in April 2015, our first annual concurrency report detailing how the enhanced concurrency arrangements are working. The report is prepared in consultation with the sector regulators and sets out information on case work across all the regulated sectors in the economy, and reviews any decisions made by sector regulators in cases where Competition Act powers were exercisable, but it was determined that it was more appropriate to exercise sector-specific regulatory functions. The report will also note work being done by the CMA and the sector regulators which promotes competitive outcomes, for the benefit of consumers.
- 6.8 The CMA’s representatives in Scotland, Wales and Northern Ireland are active in promoting the CMA’s role in the nations. The CMA’s representatives in the nations also play an important role in raising awareness of our work and ensuring that competition, consumer and market issues in these nations are communicated back to us.
- 6.9 The CMA welcomes positive feedback on our levels of engagement to date and will share future plans on stakeholder engagement going forward. We are undertaking research into our relationships with stakeholders which will guide our approach into the future.
- 6.10 With regard to the CMA’s partnership and advocacy with consumer partners, we refer to comments above at paragraph 3.2.

## **7. Developing the CMA**

- 7.1 Respondents also welcomed the CMA's plans to develop and identify leading experts within each competition profession, and needs-based programmes to ensure staff are appropriately skilled, and emphasised the importance of empowering experienced individuals to take difficult decisions at the right time.

### **The CMA view**

- 7.2 The CMA is firmly committed to maximising opportunities to grow the potential of staff. As noted in the Annual Plan, we will ensure staff are equipped with the right skills to effectively run cases, undertake high quality analysis, and manage overall risk. As part of the CMA's career pathway strategy, we will implement learning, development and competency framework for the core professions within the CMA (economists, lawyers, remedies business and financial advisors, investigators and delivery), aiming to help staff achieve the highest standards. Professional skills training will be facilitated by the CMA Academy using both internal and external courses to develop colleagues. We have also taken steps to embed senior staff in cases at an early stage and ensure robust decisions are taken in a timely way.

## 8. Resources

- 8.1 One respondent said that resources 'must be shown to be used effectively'. The respondent reflected that the 2015/16 Annual Plan should set out a strategy to evidence the impact of the transition and highlight the efficiencies made.

### The CMA view

- 8.2 The CMA agrees on the importance of demonstrating efficiency gains arising from the merger of the Office of Fair Trading and the Competition Commission.
- 8.3 The Annual Plan notes a number of approaches to embedding and developing benefits flowing from the creation of the CMA. For example, the CMA has introduced a Project Management Office function which facilitates the allocation of colleagues to projects ensuring we aim for efficient and effective project teams, and that colleagues have the opportunity to develop a depth and breadth of experience by working on different projects and tools. We intend to communicate the impact and benefits of the transition and related efficiency improvements as part of our annual reporting process. This includes reporting against our Performance Management Framework in which there are relevant metrics.

## Appendix A: List of respondents

- Association of Chief Trading Standards Officers
- Confederation of British Industries (CBI)
- Consumer Council for Northern Ireland
- Department of Enterprise, Trade and Investment – Northern Ireland
- Federation of Small Businesses
- Financial Conduct Authority
- Llywodraeth Cymru (Welsh Government)
- Payment Systems Regulator
- Value Wales
- Which?

**Consultations and roundtables to consult on the Annual Plan were also held in Edinburgh and Cardiff which were attended by the following:**

- Accountants in Bankruptcy
- Brodies Solicitors
- Cardiff Metropolitan University
- Confederation of British Industries (CBI) – Northern Ireland
- Convention of Scottish Local Authorities
- Citizens Advice Cymru
- Federation of Small Businesses – Scotland
- Institute of Chartered Accountants in England and Wales – Wales
- Law Society of Scotland
- Maclay Murray & Spens LLP
- Ofcom – Wales

- Ofgem – Scotland
- Royal Institution of Chartered Surveyors – Wales
- Sarah O'Neill (independent expert)
- Scottish Business Resilience Centre
- Scottish Legal Complaints Commission
- Scottish Government
- Trading Standards – Highlands and Islands
- University of Edinburgh Law School
- Value Wales
- Welsh Government
- Which? – Scotland