

Consultation on vision, values and strategy for the CMA

Consolidated stakeholder responses

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Any enquiries regarding this publication should be sent to us at: Policy, Precedent and Procedures Unit, Competition and Markets Authority, Victoria House, 37 Southampton Row, London, WC1B 4AD or by email to guidance@cma.gsi.gov.uk.

This publication is also available at: www.gov.uk/cma.

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Response to Competition and Markets Authority
CMA13con: Vision, values and strategy for the CMA

11 November 2013

ALLEN & OVERY
ALLEN & OVERY LLP

CMA13con: VISION, VALUES AND STRATEGY FOR THE CMA

This response represents the views of law firm Allen & Overy LLP on the draft Competition and Markets Authority (CMA) document *CMA13con: Vision, values and strategy for the CMA* (the **Consultation Document**). We have also responded separately to the following consultations:

- Competition Regime: Draft secondary legislation – part two
- CMA8con: Competition Act 1998: CMA Guidance and Rules of Procedure for investigation procedures under the Competition Act 1998
- CMA9con: Cartel Offence Prosecution Guidance
- CMA10con: Regulated Industries: Guidance on concurrent application of competition law to regulated industries
- CMA11con: Remedies: Guidance on the CMA’s approach to the variation and termination of merger, monopoly and market undertakings and orders
- CMA12con: Proposed approach to the treatment of existing Office of Fair Trading and Competition Commission guidance

We confirm that this response does not contain any confidential information and we are happy for it to be published on the CMA’s website.

1. Do you agree that the CMA’s vision accurately and adequately describes what the CMA is seeking to achieve? Do you have any comment on it?

- 1.1 The five goals set by the CMA in the CMA Vision section of the Consultation Document are crucial to the CMA’s overall ambition of consistently being one of the leading competition and consumer agencies in the world.
- 1.2 It is clear that the CMA will focus on business behaviour and on productivity and growth in the economy, as well as consumers, in seeking to promote competition for the benefit of consumers.

2. Do you have any comment to make on the CMA’s proposed strategy or the priorities set out within it?

- 2.1 We would strongly support the consolidation in one document of the CMA’s priorities set out in the CMA’s Proposed Strategy section of the Consultation Document with the OFT’s existing prioritisation principles (OFT953).
- 2.2 As we also note in response to *CMA12con: Proposed approach to the treatment of existing Office of Fair Trading and Competition Commission Guidance*, there is some confusion as to the future of OFT953. Annexe B of CMA12con marks these as to be replaced/obsolete. *CMA11con: Remedies: Guidance on the CMA’s approach to the variation and termination of merger, monopoly and market undertakings and orders* states at footnote 10 of Annex C that revised prioritisation principles will be finalised by April 2014. However, the Consultation Document notes at page 17 that the CMA does not propose to change the OFT’s existing prioritisation principles, but will interpret them in the light of the Government’s strategic steer and CMA13con. We would be grateful for clarification.
- 2.3 We welcome the proposal (on page 12 of the Consultation Document) to create a new UK Competition Network with the sector regulators. This is particularly important given the addition of

Monitor as a concurrent regulator and the Government's proposal to give full concurrent powers to the Financial Conduct Authority (as provided in the amended Financial Services (Banking Reform) Bill. The larger the number of UK regulators with concurrent competition powers, the more difficult it will be to ensure consistent application of the rules. A mechanism that enables effective and regular dialogue between the CMA and the sector regulators is therefore key, and the creation of a Competition Network appears to us a sensible way to achieve this. When establishing the Network the CMA could seek to use the ECN as a template.

3. Do you have any comment to make on the CMA's proposed statement of values?

3.1 No comment.

Aviva



Aviva Response to the Competition & Markets Authority (CMA) consultation on “Vision, values and strategy for the CMA”

About Aviva

Aviva provides 34 million customers with insurance, savings and investment products. We are the UK’s largest insurer and one of Europe’s leading providers of life and general insurance. We combine strong life insurance, general insurance and asset management businesses under one powerful brand. We are committed to serving our customers well in order to build a stronger, sustainable business, which makes a positive contribution to society, and for which our people are proud to work.

Introduction

Aviva responded to the Department for Business, Innovation & Skills (BIS) Consultation on the Proposed Steer for the CMA welcomes the opportunity to participate in the current consultation.

Aviva believes that ensuring the CMA’s Vision and goals are fit for purpose is paramount. As such Aviva has focused on Question 1 of the Consultation Document:

Do you agree that the CMA’s vision accurately and adequately describes what the CMA is seeking to achieve? Do you have any comment on it?

However, Aviva draws upon the whole Consultation Document in answering this question. Below are the key points Aviva wishes to make.

Key Points

1. Deliver effective enforcement

The goal stresses the need to "ensure that businesses and individuals understand the law and know that effective sanctions follow if they break it". The goal also stresses that the CMA will “pursue the right cases”, however, Aviva believes that the Consultation Document is especially light in describing how the CMA might do this and gives no assurance to industry or consumers as to how the CMA will operate to ensure they do understand the law or their criteria to pursue the right cases.

Aviva believes that the CMA should, as the very least make statements about what minimum level of business and consumer education the CMA aspires to. The CMA must also acknowledge that if the priority is unclear on what the right cases are business costs increases as a result of taking advice. In addition interaction, and associated costs, for guidance increases as business contact the CMA.

2. Achieve professional excellence

Aviva welcomes the fact that this goal specifically seeks to avoid “unnecessary burdens on businesses”, however it is not clear how or on what basis this will be achieved. The CMA should also aim to reduce timelines experienced when interacting on thematic reviews and inquiries where the amount of data demanded is too wide and generic. The real issues can be lost and the CMA must have a more disciplined approach to data capture and data demands, this is especially true for insurance markets where they review data that can be 5-7 years old.

3. Interaction with the FCA

The Consultation Document is light on how the CMA will interact with the competition role of the FCA. This requires greater clarity in particular on how appeal rights will be dealt with.

4. Consumer benefit

The Consultation Document makes the claim that “OFT and CC action has reduced prices or charges to consumers”, however Aviva is concerned that these claims are unaudited and unsubstantiated. A better more robust approach would be to allow such claims to be independently assessed and Aviva believes that the CMA should follow such an approach in future.

Confederation of British Industry

28 November 2013

Alex Chisholm
Chief Executive
Competition and Markets Authority
Victoria House, 37 Southampton Row
London WC1B 4AD

I am writing to set out the CBI's comments on the CMA's Vision, Values and Strategy document. We support your efforts to consult and engage with external stakeholders on the CMA's new powers and future priorities.

The CBI has supported the establishment of the CMA to help deliver a competition regime that delivers timely and proportionate outcomes for business and consumers, while ensuring that competition contributes towards long-term sustainable growth.

We think that the CMA has an important role to play in helping to restore trust and confidence in markets. It can do this by ensuring that customers are in control, for example by tackling issues such as price opacity, and by putting an emphasis on choice as well as the sheer number of players in a market. Product or service differentiation can play an equally important role in delivering for consumers and is the right focus for some markets.

By fostering an open exchange with businesses, especially at senior levels, objectives on both sides will be better understood. Business and the CMA should have space to regularly debate general market issues outside of a specific market inquiry. This will help to prevent the relationship from going "too legal, too fast" in a way that has stifled constructive dialogue. Given its expert knowledge, the CMA should play a role in engaging with politicians and other stakeholders to nurture a greater understanding of the practicalities of competition law enforcement.

The CMA also needs to take a stronger hand in overseeing the competition regime to ensure that a consistent approach to competition law enforcement is taken across the regulators. There is a view



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that the concurrent regime has not worked as effectively as it might. The CBI supports an annual update on the state of competition in key regulated sectors as it can give businesses, investors and consumers a sense of predictably about where the CMA will look to take action and ensure the focus remains on the long-term interests of the market.

Finally, we believe that the independence of the competition regime is highly prized, so the 'strategic steer' issued to the CMA by the Government must avoid political interference. We believe that it is legitimate to encourage a focus on high level principles such as encouraging innovation, investment and healthy supply chains, as well as building world class companies with global scale. However, the first steer issued by the government identifies specific sectors in the economy which risks pre-judging levels of competition.

The CBI's imminent report on markets highlights a number of these issues and I will ensure we send you a copy. We look forward to building a regular and constructive dialogue between business and the CMA senior team.

Katja Hall
Chief Policy Director

Citizens Advice Scotland

Citizens Advice Scotland

Scottish Association of Citizens Advice Bureaux
www.cas.org.uk



Vision, values and strategy for the CMA

Sarah Beattie-Smith and Fraser Sutherland
Consumer Policy Team

November 2013

- Citizens Advice Scotland and its member bureaux form Scotland's largest independent advice network. CAB advice services are delivered using nearly 250 service points throughout Scotland, from the islands to city centres.
- In 2012/13, the Citizens Advice Service helped consumers in Scotland with almost 207,000 consumer issues. That is 826 consumer issues for every working day. Just over a quarter of these were addressed by the Citizens Advice Consumer Service, handling nearly 57,000 issues, including 3856 about energy or post.
- Scottish citizens advice bureaux helped consumers with 150,000 consumer issues, covering topics as diverse as payday loans and car maintenance.
- In 2011/12, Scottish bureaux achieved a financial gain of almost £140million for clients based on funding of £16.9million.

About us

The Scottish Citizens Advice Bureau (CAB) Service is made up of Citizens Advice Scotland and a network of local citizens advice bureaux.

- Citizens Advice Scotland (CAS) is a national umbrella body that provides essential services to Scottish citizens advice bureaux
- Citizens advice bureaux are independent, local charities that are members of Citizens Advice Scotland. Bureaux provide advice and information to people in need in over 250 locations.

The **aims** of the Scottish CAB Service are;

- to ensure that individuals do not suffer through lack of knowledge of their rights and responsibilities, or of the services available to them, or through an inability to express their need effectively

and, equally

- to exercise a responsible influence on the development of social policies and services, both locally and nationally.

Citizens Advice Scotland's **vision** is for a fairer Scotland where people as citizens and consumers are empowered and their rights respected.

Our **mission** is to support a robust and sustainable network of citizens advice bureaux across Scotland in the provision of information, advice, education and representation for all who need it;

and;

to be a voice for citizens and consumers in Scotland and to represent their interests to Government, policy makers and public and private organisations.

Introduction

Citizens Advice Scotland welcomes the opportunity to respond to the Competition and Markets Authority's Vision, Values and Strategy statement. Like the Office of Fair Trading and the Competition Commission, the Citizens Advice Service across Great Britain is in the process of transformation in order to simplify and strengthen the consumer landscape.

As we near the completion of this transformation, we recognise the importance of effective partnership working across the consumer landscape, in order to achieve the best outcomes for consumers, businesses and the wider economy. We look forward to working closely with the CMA in the coming years and hope that this response helps to inform the organisation's plans for the future.

Executive Summary

CAS is broadly supportive of the CMA's vision, values and strategy as set out in the consultation document. We have some comments on specific aspects of the document which are set out below in response to the consultation questions. In addition, we have some views on the overall approach set out in the consultation. These comments are around effective partnership working, fairness for all consumers, especially those who are vulnerable or in vulnerable situations and around the reach and power of competition.

Effective partnership

Throughout the consultation document we welcome the commitment to work closely with consumer organisations like CAS as well as with regulators and enforcement bodies. We believe that there are numerous ways in which our organisations can work together, particularly around the sharing of intelligence and understanding the needs, priorities and experiences of consumers. However we are keen to ensure that our organisations can collaborate in a way which minimises any burdens we may place upon one another.

For our part, CAS is a relatively small organisation with a broad and ambitious remit and limited resources. Therefore in working towards an effective partnership with the CMA, we would welcome advance notice of planned work which might affect us or consumers in Scotland whilst recognising that we may not always be able to take part or commit resources.

Fairness for all consumers

In our relationship with the Office of Fair Trading (OFT), we have always valued their commitment to fairness. For us, this focus on fairness is an integral part of what they do, and not just in respect of minimising the burden on businesses. Ensuring fairness for *consumers* in markets must be at the heart of what the CMA strives to achieve. Whilst "fairness" is one of the values stated in the consultation, it is only in relation to reducing the burden on business, rather than explicitly addressing fairness for consumers.

In addition, the consultation document talks about consumers as being confident, empowered and well informed consumers, yet only briefly touches on issues like vulnerability, income, living standards and skills. These issues are crucial and in our view, must be a core concern for the CMA. We would strongly welcome a refocusing of the vision, values and strategy to place fairness for *all* consumers at the heart of the CMA.

The reach and power of competition

We have two main comments regarding the reach and power of competition as set out in the consultation document. The first is around competition in public services and the second is around the extent to which competition creates benefits for consumers. The consultation document makes several references to competition for public services as an area where the CMA sees itself playing an important role. As Clive Maxwell, CEO of the OFT stated in a recent speech¹, competition in public services can bring down prices and clearly provide greater choice for consumers, but it also creates potential for consumers to be faced with a "confusopoly". We would

argue that the increasing complexity of competitive markets such as that for energy or telecoms can leave consumers confused and disadvantaged. Particularly in the case of the energy market, the growth in profits by the six largest suppliers has given rise to questionsⁱⁱ about whether private profit is the best driver of markets that work well for consumers. Conversely, Scottish Water which is both publically owned and a monopoly provider of water to households in Scotland has consistently high consumer satisfaction ratings and the lowest price for household water in Great Britainⁱⁱⁱ. This is not to say that monopoly, state owned utilities and industries are inherently better for consumers. Rather, we would urge the CMA to take a balanced approach in the interpretation of the Government's strategic steer around competition in public services.

On a similar note, we would suggest that the consultation document's focus on achieving financial gains for consumers as a result of a stronger competition regime could result in the CMA missing the opportunity to tackle consumer detriment beyond simple financial harm. The social exclusion and vulnerability that some markets and business practices create or perpetuate^{iv} are certainly harder to measure and therefore harder to tackle than financial loss. However, a focus on a wider definition of consumer detriment may result in greater and more meaningful gains for consumers, businesses and the wider economy in the long run.

Question 1 – *Do you agree that the CMA's vision accurately and adequately describes what the CMA is seeking to achieve? Do you have any comment on it?*

CAS generally welcomes the vision of the CMA as set out in this consultation especially the clear commitment towards consumers in its mission statement. However, despite this headline commitment to consumers, we are of the view that the goals set out to achieve this mission are lacking the clear actions needed to support consumers. More detail on how the CMA plans to achieve and measure benefits for consumers would be welcome.

It is unclear from the consultation document how 'extending competition frontiers' will be of benefit to consumers. While we accept that more competition can be of benefit by giving consumers more choice, there are some occasions and some markets where this can have a detrimental impact on consumers especially those who are in vulnerable situations. Within the energy market, for example, despite the wide variety of tariff charges to choose from, research from Which? showed that seven out of ten consumers could not identify the best deal for their needs^v. Simply aiming to "extend competition frontiers" without due consideration of the potentially detrimental aspects of competition, may therefore have a negative effect.

We strongly welcome the commitment to effective enforcement, however we would welcome more detail on how the CMA plans to deliver this. Enforcement is a vital aspect of consumer protection, giving consumers confidence that their rights will be protected and that poor practice or breaches of consumer law will be addressed. We would particularly welcome any further detail the CMA could provide on how they plan to work with both the National Trading Standards Board and Trading Standards Scotland in ensuring that consumers across the UK receive the best protection.

In addition, we welcome the commitment to professional excellence within the CMA and the assurance that the organisation will operate in a transparent manner. As a consumer organisation, it can be challenging to develop and maintain open and productive dialogues with regulators, government and other statutory bodies. One example of a regulator with which CAS has a positive working relationship is the Financial Conduct Authority. As a result of their transition from the Financial Services Authority, the new FCA has made concerted efforts to engage with consumer organisations in an open and constructive manner, without placing burdens on those organisations. We would cite their Consumer Network^{vi} as an example of good practice which the CMA may wish to adopt in achieving the goals set out above.

Question 2 – Do you have any comment to make on the CMA’s proposed strategy or the priorities set out within it?

CAS welcomes the approach to the CMA’s proposed strategy and many of the priorities set out within it. We have a few comments to make on these around the CMA’s approach to achieving positive outcomes for *all* consumers, including those in vulnerable situations or who are excluded from certain markets. In addition, we have some comments on the CMA’s approach to working with businesses, including businesses as consumers, and we have some views on competition within public services.

In the section of the document entitled “Why does competition matter?”, the strategy gives several examples of some of the positive effects of competition. It would be useful if these examples were referenced to allow us to make an accurate assessment of their value as international comparators. In addition, we would like to see a rounded approach to competition which recognises some of the ways in which competitive markets can cause or perpetuate detriment or vulnerability for consumers and businesses.

We are concerned by the strong emphasis that the strategy places on empowered and confident consumers who are able to thrive in competitive markets. This emphasis ignores the challenges that face the most excluded and vulnerable in society who are often overwhelmed by the choice and independent action required to achieve the best deals and avoid harm. CAS is strongly supportive of Ofgem’s very useful consumer vulnerability strategy^{vii}, which sets out a broad definition of vulnerability and proposes ways in which businesses and regulators may wish to approach vulnerability. We would recommend that the CMA adopts a similar understanding of vulnerability and incorporates this into their strategy. In addition, we would urge the CMA to continue the approach of the OFT which places considerations of consumer vulnerability at the heart of their work^{viii}.

We agree with the CMA that in the current economic climate certain risks may be posed to both businesses and consumers. However, we would welcome a stronger emphasis on the impact of the current economic climate on both the cost of living and the wider impact on the extent to which consumers are able to participate and engage in markets. In this vein, we welcome the strategy’s recognition of the issue of digital exclusion. The barriers to online access, however, are not just confined to ‘being internet savvy’. Research conducted by CAS in Spring 2013 showed that

digital exclusion can result from a multitude of barriers including poor skills and low confidence in using computers and the internet, as well as geographical barriers such as rurality and practical issues such as cost^x. We would welcome a more rounded approach to examining all aspects of exclusion which takes into account the many and varied barriers facing consumers.

As well as an emphasis on tackling exclusion and its causes, we would urge the CMA to reconsider its emphasis on fairness for businesses. Whilst the aim of ensuring fairness for businesses is to be welcomed, there is no similar aim to ensure fairness for consumers. This is a significant omission and sets the CMA apart from the previous approach of the OFT. CAS would strongly welcome a revision of the strategy to ensure that fairness for all consumers is given equal prominence to fairness for businesses.

As outlined in the introduction to this response, CAS has some concerns relating to the focus in the strategy given to competition within public services. We are not convinced of the need for the CMA to extend its role to examining and even promoting competition in public services. Indeed, we believe that this approach could potentially divert resources away from vital work on protecting consumers of private services and could duplicate the protection for citizens that we would expect to be built in to any public service. Whilst we would accept that the CMA's expertise could be helpful for Government if particular public services are to be opened up to private competition, we would counter that the CMA's independence from Government is of crucial importance for its credibility.

The strategy sets out the CMA's plans for supporting businesses to understand their rights and responsibilities and for reducing the regulatory burdens placed on them. We welcome this and look forward to seeing further detailed plans about how the CMA intends to work with the Trading Standards community in delivering business education. We would also welcome the addition of a commitment to examine the relationships between businesses, particularly between large businesses and SMEs in a supply chain. CAS research on parcel deliveries, for example, showed that some smaller businesses often feel unable to negotiate terms with large courier companies or large suppliers^x. Such difficulties within a supply chain can be detrimental for those small and medium sized enterprises but can also result in detriment for consumers and wider negative consequences for the economy. A related focus on businesses, consumers and markets in rural areas would also be welcome.

The strategy identifies regulated sectors as an area where there is significant consumer detriment. Whilst we would agree with this assessment, we would be hesitant to agree with the conclusion that there should be a renewed focus on these areas for the CMA, thus producing considerable overlap with other regulators. As the only regulator covering the majority of goods and services outside of energy, post, water and financial products, we are of the view that a shift to a focus on regulated industries could detract from the much needed regulatory work on other markets.

Finally, in terms of how the CMA evaluates its work we recognise the value of attempting to achieve five times the organisations' costs in benefits to consumers.

However, CAS would urge caution in placing too much emphasis on financial detriment and benefit. Not all consumer detriment is financial and we would have some concerns about the cost/benefit ratio being the sole measure of success.

Question 3 – *Do you have any comment to make on the CMA’s proposed statement of values?*

CAS supports the proposed statement of values for the CMA but have the following comments. Under “fairness” we would like to see consumers feature as well as business in the external demonstration, for the reasons stated above.

We welcome the approach to working with external partners such as ourselves but would stress that we have limited resources and our own ambitious targets. Therefore the demands put on consumer bodies will need to be balanced with what they can manage.

Finally, we welcome the CMA’s commitment to objectivity and ensuring that they are aware of evidence produced by third parties to inform the work they carry out. We look forward to working closely with the CMA in sharing intelligence for the benefit of consumers and the wider economy.

References

- ⁱ http://www.ofst.gov.uk/shared_ofst/speeches/2013/06-13_Compensation_in_public1.pdf
- ⁱⁱ For example, the UK Parliament's Energy and Climate Change Committee has recently been investigating the transparency of energy prices;
<http://www.parliament.uk/business/committees/committees-a-z/commons-select/energy-and-climate-change-committee/news/energy-prices/>
- ⁱⁱⁱ <http://www.scottishwater.co.uk/about-us/publications/key-publications/scottish-water-annual-report-2012-13>
- ^{iv} CAS strongly supports Ofgem's Consumer Vulnerability Strategy which points out that vulnerability is not always a fixed state for consumers but can be transient and in fact caused or perpetuated by markets or market behaviour. <https://www.ofgem.gov.uk/ofgem-publications/75550/consumer-vulnerability-strategy.pdf>
- ^v <http://www.which.co.uk/news/2013/06/governments-simpler-energy-tariffs-leave-consumers-confused-321397/>
- ^{vi} The FCA Consumer Network brings together a number of consumer groups who not only feed into strategic discussions but are also widely consulted on a variety of workstreams:
<http://www.fca.org.uk/static/documents/a-response-to-journey-to-the-fca.pdf>
- ^{vii} <https://www.ofgem.gov.uk/ofgem-publications/75550/consumer-vulnerability-strategy.pdf>
- ^{viii} OFT 2013 Annual Plan Response Summary which has a substantial section on ensuring the rights of vulnerable consumers http://www.ofst.gov.uk/shared_ofst/consultations/annual-plan-cons/OFT1462resp.pdf
- ^{ix} CAS research into digital exclusion <http://www.cas.org.uk/publications/offline-and-left-behind>
- ^x CAS research into parcel deliveries <http://www.cas.org.uk/publications/postcode-penalty>

EDF Energy



CMA Strategy Consultation
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12 November 2013

Vision, values and strategy for the CMA

EDF Energy is one of the UK's largest energy companies with activities throughout the energy chain. Our interests include nuclear, coal and gas-fired electricity generation, renewables, and energy supply to end users. We have over five million electricity and gas customer accounts in the UK, including residential and business users.

EDF Energy broadly supports the overall aims and ambitions of the CMA contained in the "*Vision, Values and Strategy for the CMA*" consultation. The competition reform debate recognised that institutional design has an impact on outcomes. The case for moving from two to one competition authority was seen to provide positive benefits. However, the key concern was that since the roles undertaken by the CMA would be investigator, prosecutor and judge it had to avoid simply re-enforcing its initial view of the case as it goes through the investigation and rejecting or ignoring information contrary to its initial view (confirmation bias). The development of the CMA priorities and more importantly its culture should explicitly address this risk.

The Enterprise and Regulatory Reform Act created some important changes in UK competition policy regime. Furthermore, the widespread adoption of behavioural economics by regulators and competition authorities has meant that industries' understanding of regulatory policy needs to be refreshed. We would like to see the CMA actively engage with companies in order to develop this understanding and aid firms' ability to comply with competition law. We believe the CMA's aims and strategy needs to identify this work in greater depth than it does currently. At present the document mentions this on page four in respect of the proposed 'goals' but is not further elaborated in the relevant strategy section on page eleven.

A good model to follow is the development of financial regulation. For example, in implementing REMiT the European regulator ACER is running seminars on its implementation. A fully integrated strategy should have at least an element of prevention not just enforcement.

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We would like additional clarity on how the CMA will make trade offs between competing priorities and resources. At present we have no sense of prioritisation and resource deployment to activities other than the order they are published in the document.

Our detailed responses are set out in the attachment to this letter. Should you wish to discuss any of the issues raised in our response or have any queries, please contact Ravi Baga on 020 7752 2143, or myself.

I confirm that this letter and its attachment may be published on CMA's website.

Yours sincerely,

Angela Pearce
Corporate Policy and Regulation Director

Attachment

Vision, values and strategy for the CMA

EDF Energy's response to your questions

Q1. Do you agree that the CMA's vision accurately and adequately describes what the CMA is seeking to achieve? Do you have any comment on it?

We agree with the vision as stated on page four and five of the document. Confirmation bias has been identified as the single biggest issue facing unitary competition authorities as they are investigator, prosecutor and judge. We would suggest that eliminating this problem should be explicitly included in the delivering effective enforcement section of the document. For example, the European Commission has developed the role of hearing officers to "to ensure due process, to safeguard the parties, procedural rights, and to contribute to the quality of the decision-making in EC Antitrust and Merger proceedings."¹ We would like to see this type of thinking explicitly demonstrated in the document.

Q2. Do you have any comment to make on the CMA's proposed strategy or the priorities set out within it?

We agree with the priorities as stated in the document.

The vision, values and strategy is wide ranging and because of this we would like to know a lot more about how the CMA will make trade offs between competing priorities and resources. At present we have no sense of prioritisation and resource deployment to activities other than the order they are published in the document.

Within the proposed strategy, we welcome recognition of the need for the CMA to work with sector regulators in order to further promote the effectiveness of the concurrency arrangements and to ensure that there is a collaborative and complimentary approach to consumer protection.

Q3. Do you have any comment to make on the CMA's proposed statement of values?

We agree with the values as stated within the document.

¹ <http://ec.europa.eu/dgs/competition/>

Crucial to an effective competition regime is the perception that it is fair. The CMA may need to trade off the interests of different types of consumers who are more or less likely to understand the markets they are active in. It may be there needs to be further trade offs between consumer groups who could be cross subsidising each other. This is clearly a public policy choice, but one based on the concept of fairness. This value needs to be more explicitly fleshed out given its importance to competition policy and the CMA.

EDF Energy
November 2013

Energy UK

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12 November 2013

Vision, values and strategy for the CMA

Energy UK is the trade association for the energy industry. Energy UK has over 80 companies as members that together cover the broad range of energy providers and supplies and include companies of all sizes working in all forms of gas and electricity supply and energy networks. Energy UK members generate more than 90% of UK electricity, provide light and heat to some 26 million homes and last year invested £10billion in the British economy.

Energy UK is pleased to respond to the Competition and Markets Authority (CMA)'s consultation on its draft vision, values and strategy. This submission represents a high-level industry position; our members may have different views on particular issues.

It is important for businesses operating in regulated sectors, including energy, to understand how the CMA will behave with respect to the market(s) in which they operate. For this reason, Energy UK feels that it is useful for the CMA to set out its vision, values and strategy, and welcomes its decision to consult on the content. Amongst other things, the document translates the CMA's statutory underpinnings into a more accessible form, and gives interested parties an extra insight into how it will deliver on them.

Energy UK has four specific concerns with the CMA's draft vision, which reflect our more general priorities for the UK competition regime.

Firstly, more emphasis should be placed on the CMA's determination to avoid confirmation bias, and steps that it will take to minimise the risk that it occurs. For example, the CMA should implement structural arrangements to ensure views are subject to genuine internal challenge, and that investigation and decision-making functions are separated.

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t @EnergyUKcomms

Secondly, the CMA should provide, whether via the vision or elsewhere, more clarity on the impact that it expects its focus on behavioural economics (BE) to have in practice, and when the theory would be more (and less) relevant to the CMA's work. For instance, Energy UK would presume that BE would be more relevant to market studies than enforcement. Energy UK notes that there are few examples of BE being used in competition assessments, so it is difficult for companies to know without further guidance what risks and compliance requirements this theoretical area might impose. At the same time, the CMA would need to be aware of the risk of prejudicing more rigorous academic analysis with a high-level indicative view.

Thirdly, Energy UK believes that the CMA vision should place more emphasis on the need for its choices to be made without influence from politicians and the media, especially given the context of the "Steer" within which the CMA will be operating (which itself arguably entails a form of political influence). The credibility of the regime requires the CMA to be independent, which will also impact on the attractiveness of the UK as a place to do business relative to other jurisdictions. To do otherwise will diminish the quality and credibility of the CMA's decisions.

Finally, Energy UK believes that the vision should emphasise procedural best practice more explicitly; this is a fundamental element of ensuring that decisions are good, timely and stand up to appeal. As such, it is essential that the CMA sets the benchmark in this area, as well as providing leadership to the regulators with which the CMA has concurrent powers.

We hope that you find these comments useful. If you have any questions, please do not hesitate to contact me on 020 7747 2962 or alun.rees@energy-uk.org.uk.

Yours sincerely

Alun Rees
Senior Manager, Retail

ESRC Centre for Competition Policy at the University of East Anglia



Competition & Markets Authority

Vision, values and strategy for the CMA: Consultation document.

Consultation response from the ESRC Centre for Competition Policy

University of East Anglia, Norwich Research Park, Norwich NR4 7TJ

Date: 11th November 2013

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The authors retain responsibility for the contents of this consultation response.

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● The ESRC Centre for Competition Policy (CCP)

CCP is an independent research centre, funded by the Economic and Social Research Council (ESRC), and established in 2004 as a Centre of Research Excellence. CCP's research programme explores competition and regulation policy from the perspective of economics, law, business and political science. CCP has close links with, but is independent of, regulatory authorities and private sector practitioners. The Centre produces a regular series of Working Papers, policy briefings and publications, and a bi-annual newsletter with short articles reflecting our recent research. An e-bulletin keeps academics and practitioners in touch with publications and events, and a lively programme of conferences, workshops and practitioner seminars takes place throughout the year. Further information about CCP is available at our website: www.competitionpolicy.ac.uk

Question 1: Do you agree that the CMA’s vision accurately and adequately describes what the CMA is seeking to achieve? Do you have any comment on it?

There is an apparent conflict between the CMA’s primary duty as set out in the Enterprise and Regulatory Reform Act 2013 s25(3) “to promote competition... for the benefit of consumers” and the CMA’s mission to make “markets work well in the interests of consumers, businesses and the economy”. Several issues arise:

- a) The primary duty looks like a consumer welfare standard (i.e. prioritising consumers over all others) but the mission looks more like a total welfare standard (i.e. also taking business profits and more generally ‘producer surplus’ into account, and possibly also pollution and other externalities). In many cases of the sort that come before a competition authority, these can be in conflict. Why does the wording differ? How should the different wording be interpreted? The lack of consistency between the highest level duty and the mission sets a damaging precedent for confused thinking at the CMA, and could waste valuable resources if parties debate this issue case by case.
- b) In the primary duty, the work ‘promote’ is used in relation to competition. However, in mergers, the standard is to ‘protect’ competition. In particular, could remedies be required to enhance competition, rather than the current situation of only ensuring that the current level of competition is not eroded? This seems a much more minor issue than point a) above.
- c) It is not clear how the CMA’s duty/mission fits with the duties/missions of the other regulators with which the CMA pivotally interacts.

Clarification on the above would be desirable.

Question 2: Do you have any comment to make on the CMA’s proposed strategy or the proprieties set out within it?

- a) The government has set out five sets of issues which it considers to be crucial to growth and which it would like the CMA to have regard to in developing its strategic and operational plans (p10). These are to:
 - Take account of consumer behaviour particularly in markets where there are information problems and asymmetries.

- Take account of longer-term dynamic competition through innovation and the development of new business models, as well as short-term competition in the market.
- Be willing to consider potential competition concerns in business-to-business markets, including the effects of differences in bargaining power between firms in a supply chain.
- Assess specific sectors where enhanced competition could contribute to faster growth, working with the responsible regulator where appropriate; and
- Address emerging competition problems early and increase the number and speed of cases, to the benefit of consumers and the wider economy while ensuring fairness and avoiding undue burdens on business.

While the consultation document acknowledges these issues, it is unclear how the CMA will prioritise them. In particular:

- i. The second bullet is a laudable aim and we support it in principle. However, it is often difficult to assess the evidence on innovation and the stability of new business models, and many competition authorities end up emphasising the short-term competition for which evidence is easier to assess. What will be the CMA's position in cases where there is an apparent tension between long-term and short-term issues?
 - ii. The third bullet (after 'including...') may tempt the CMA into commercial disputes that could distract it from its primary duty. The CMA should be slow to get involved in arguments between two undertakings about how they split the surplus generated from their activities unless they can demonstrate how this harms consumers now or in the future. It is not just that it would be an inappropriate use of CMA resources to referee such an argument – there are other long-standing commercial law means so deal with this.
- b) In terms of delivering effective enforcement (p.11), no distinction is made between mergers, antitrust and market inquiries. This is particularly relevant for the fourth bullet on “case management procedures to improve the rigour and perceived fairness of decision making”. These are very different in the OFT and CC, so we were looking for a clear CMA strategy on decision making, beyond the vague promise of “securing the benefits of collective decision making, drawing on the experience of the CMA panellists where it can add value across a broader range of work and further enhancing the robustness of case decisions to challenge.” The CMA should have these procedures very clearly and visibly in place before it takes over case handling, particularly of CA98 cases (antitrust).

- c) There is no acknowledgement that there can be limits to what competition can achieve and where other complementary policies are necessary. For example, effective competition may not always benefit some important social group (e.g. the poor or vulnerable) or unbridled competition may have negative externalities (e.g. pollution, deserted city centres). In such cases, income support, pollution taxes and planning laws are necessary to provide a balanced policy mix. The acknowledgement of such issues by the CMA would help it focus more sharply on what it can positively achieve, which is a great deal.
- d) Finally, under the heading 'Achieve professional excellent' and as an academic research centre, we would like to see an extra bullet point: "Work with the research community to incorporate practical and robust research results in professional practice".

Question 3: Do you have any comment to make on the CMA's proposed statement of values?

- a) In the Table on p.20, under external 'Fairness', the consultation document states: "we allow everyone their say...". This sounds hollow as there is no commitment to do other than go through the motions. It would be better to add something like "and give careful consideration to the evidence they provide". This would then tie helpfully with the internal 'Objectivity' value that "we are evidence based".
- b) It is not made explicit, but we trust that there is no sense of ordering in a list of values that places 'ambition' first and 'objectivity' last!

BL/MH/AS

National Federation of Retail Newsagents

NFRN CONSULTATION RESPONSE: VISION VALUES AND STRATEGY FOR THE CMA

Introduction

1. The National Federation of Retail Newsagents (NFRN) would like to thank the Competition and Markets Authority for the opportunity to respond to its consultation on the vision, values and strategy for the CMA.
2. The NFRN is one of Europe's largest trade associations, representing over 16,500 fee paying members from approximately 18,000 independent newsagents and convenience stores across the UK, Channel Islands and the Republic of Ireland. We are a membership led organisation that is democratically structured; policy is made by annual conference and its implementation is overseen by National Council.
3. The NFRN assists the independent retailer to compete more effectively in today's highly competitive market through the provision of practical help and assistance, commercial support, deals and buying opportunities, training, expertise and services, it also represents its members' interests at governmental and parliamentary level, as well as within the news and magazine industry.

Response

Q1) Do you agree that the CMA's vision accurately and adequately describes what the CMA is seeking to achieve? Do you have any comment on it?

The NFRN agrees that the CMA's vision accurately describes what the CMA is trying to achieve. In particular, we welcomed that the mission statement highlighted the CMA would make markets work well in the interests of businesses, as well as in the interests of consumers and the economy.

However, we felt that this point needed to be reinforced in the CMA's five goals. Under goal one 'Deliver effective enforcement', point one, it says that the CMA will "deter wrongdoing and prevent consumers losing out from anticompetitive mergers or practices'. We feel that this statement needs to include businesses, as many of our members, who are small, independent businesses, have become victims of the anticompetitive practices in the news distribution market. It is important to acknowledge the impacts that such a situation have not only on customers but on businesses too.

Q2) Do you have any comment to make on the CMA's proposed strategy or the priorities set out within it?

The NFRN agrees with the CMA's strategy regarding the delivery of effective enforcement. It is important that enforcement action is taken against breaches in order to act as deterrent. Similarly, we support the strategy's aim to 'Extend Competition Frontiers', and agreed that it is important for the CMA to "intervene in a timely and decisive way in markets in any sector

where deficiencies of competition are clearly harming consumers, assessing where the potential for consumer benefit is greatest when selecting markets for scrutiny’.

However in relation to our earlier point, we feel that intervention should also take place where competition deficiencies are harming businesses and that this should also be factor when selecting markets to scrutinise.

Q3) Do you have any comment to make on the CMA’s proposed statement of values?

We agree with all of the values listed in the CMA’s statement. The commitment to “pursue cases vigorously” is welcomed by the NFRN, as we understand from problems in the news supply market that cases can be both complicated and time-consuming and require a robust investigation.

The Property Ombudsman



Competition & Markets Authority

**Vision, values and strategy for the CMA
Consultation**

Response from

The Property Ombudsman

(October 2013)

The Property Ombudsman's (TPO) response to the Competition & Markets Authority 'Vision, values and strategy for the CMA' consultation

1. TPO Overview

History and Purpose

- 1.1 The Property Ombudsman (TPO) has been providing alternative dispute resolution to the property industry for 23 years.
- 1.2 Originally established in 1990 as the Ombudsman for Corporate Estate Agents, in 1997 the scheme was renamed as the Ombudsman for Estate Agents, later changing to TPO to reflect its broader jurisdiction covering disputes relating to sales, lettings, personal search organisations, residential leasehold management, international sales (through UK based agents), chattels auctions and commercial property. In June 2008 TPO was the first redress scheme to gain the status of an OFT Approved Estate Agents Redress Scheme under the provisions of the Consumers, Estate Agents and Redress Act 2007.
- 1.3 TPO provides consumers with a free, impartial and independent alternative dispute resolution service for complaints against TPO scheme members (property agents operating throughout the UK). The Ombudsman's resolutions are designed to achieve a full and final settlement of the dispute and all claims made by either party. The Ombudsman can, where appropriate, make compensatory awards in individual cases up to a maximum of £25,000 for actual and quantifiable loss and/or for aggravation, distress and/or inconvenience caused by the actions of a registered firm.
- 1.4 The Property Ombudsman Limited is a 'not for profit' company limited by guarantee. There is no cost to the consumer or the taxpayer for TPO's services.
- 1.5 TPO meets the Cabinet Office guidelines on ombudsman schemes as well as the requirements of the EU Directive on ADR provision; which will be transposed into UK legislation by 2015.

Membership, Standards and TPO's Codes of Practice

- 1.6 TPO's Code of Practice for Residential Estate Agents has received full approval from Trading Standards Consumer Codes Approval Scheme (CCAS) and is followed by 11,880 estate agent branches who are members of TPO. We believe this equates to approximately 95% of the estate agents trading in the UK.
- 1.7 Despite no current legal requirement for letting agents to be registered with a redress scheme, the TPO Code of Practice for Residential Letting Agents is voluntarily followed by 10,638 letting agent branches who are members of TPO. We consider this equates to approximately 60% of letting agents trading in the UK.
- 1.8 TPO's Code of Practice for Residential Lettings Agents is in the process of achieving CCAS approval.
- 1.9 TPO's Codes of Practice are widely used throughout the property sector by other industry bodies. For example the National Association of Estate Agents (NAEA) and the Association of Residential Letting Agents (ARLA) use TPO's Codes as the basis for their own judgements regarding their members conduct. In addition, TPO's Codes have been replicated by other trade bodies to use as their own membership codes, for example the UK Association of Letting Agents (UKALA).
- 1.10 Customer satisfaction and compliance surveys carried out as part of CCAS monitoring requirements have shown a consistent increase in consumer (buyer and seller) satisfaction with member firms and the firms' compliance with the TPO Code of Practice for Residential Estate Agents. Similar positive results have been received for CCAS monitoring carried out on TPO letting agents who voluntarily follow the Code of Practice for Residential Letting Agents.
- 1.11 The cost of TPO membership is £170 (plus VAT) per office which covers the agent for letting, sales, commercial, international and auction related services.
- 1.12 TPO does not charge a case fee for disputes referred to the Ombudsman.

Governance, Independence and Principles

- 1.13 The Ombudsman provides redress, where appropriate, to consumers whose complaints are supported after consideration on a case by case basis. Redress is

intended to put the consumer back into the position they were before the complaint arose. The Ombudsman is not a regulator and does not have the authority to take regulatory or legal action against a registered firm. However, TPO works with Trading Standards and the OFT where serious regulatory or legal breaches are discovered. The Ombudsman does not make punitive awards and cannot dictate the way in which firms conduct their business. However, regular guidance on best practice is issued to registered firms and communicated to the industry as a whole.

- 1.14 The scheme charges its members an annual subscription collected by the Board of TPO Ltd. However, the Ombudsman reports directly to the independent Council, the majority of which is made up of non-industry members. The Council is chaired by Lord Richard Best. It is the Council who appoints the Ombudsman and sets his Terms of Reference, (i.e. how the complaint process operates). The Ombudsman is accountable to the Council.
- 1.15 Agents who do not comply with the Ombudsman's decisions or who have been referred to TPO for other compliance related matters can be referred to the Disciplinary and Standards Committee (DSC) who can impose sanctions on the agent or, if necessary, expel the agent from membership. The DSC is accountable to the Council and is made up of non-industry members with representation from the Board. Serious non-compliance matters which are potentially illegal are referred to the relevant authority (e.g. Trading Standards).
- 1.16 Unresolved complaints concerning TPO's service can be referred to the Council who, if appropriate, will ask the Independent Reviewer to conduct an internal investigation.
- 1.17 TPO's Annual Report includes reports from both the DSC and the Independent Reviewer. The DSC also issue press releases, where appropriate, to inform consumers about agents expelled from the scheme.
- 1.18 TPO is a full 'ombudsman member' of the Ombudsman Association (previously named the British and Irish Ombudsman Association - BIOA) and the Ombudsman sits on its Executive Committee. TPO operates in accordance with the organisation's principles of good governance:
 - Independence
 - Openness and transparency

- Accountability
- Integrity
- Clarity of purpose
- Effectiveness

2. TPO's work in 2012

2.1 During 2012, TPO received complaint enquiries from 15,782 consumers.

2.2 Relevant to lettings, 8,334 tenants and landlords raised complaint enquiries which covered 14,017 issues.

2.3 Concerning property sales, 4,261 buyers and sellers contacted TPO in relation to 6,833 separate issues.

2.4 The remainder of TPO's workload was spread out across the Ombudsman's other jurisdictions however, letting issues remained the main focus during 2012 and the upward trend has continued throughout 2013.

2.5 The average award made against a letting agent in 2012 was £325 where 70% of all disputes were either supported in whole or in part by the Ombudsman.

2.6 The average award against sales agents was £302 where 61% of cases were either supported in whole or in part.

2.7 The majority of complaint enquiries referred to TPO were resolved by providing consumers with further information, signposting to appropriate bodies and/or directing the letting agent to deal with the complaint in accordance with the in-house complaint procedure set out in the TPO Code of Practice.

2.8 Overall, 2012 figures represented a 12% increase in letting complaint enquiries and a 22% increase in lettings cases requiring formal reviews compared with 2011. A 7.5% increase in the sales workload was recorded for the same period, in contrast to the

relatively low level of sales transactions during 2012. Part of the reason was a rise in complaints from sellers where their property had not achieved a successful sale.

- 2.9 Unlike the data collected by sources such as Consumer Direct and Shelter, the Ombudsman's investigations record the agent's response to the complaints, where both sides of the argument are considered in determining whether a complaint is justified or not.

3. CMA Consultation Questions

Question 1 - Do you agree that the CMA's vision accurately and adequately describes what the CMA is seeking to achieve?

- 3.1 TPO welcomes the formation of the CMA and is supportive of its intention to complement the work of other consumer, regulatory and enforcement authorities. TPO hopes that this will result in a co-ordinated service which is quick to react, rigorous in its decisions and clear in its guidance.

Consumer and Business Guidance

- 3.2 Part 3 of CMA's vision refers to empowering consumers to exercise informed choices. The CMA indicates that competition and consumer powers will be used to achieve this aim. TPO's experience indicates that it is often uninformed choices which lead to disputes arising and that disputes themselves are increasing. Clearly empowering consumers is the key, however a consumer cannot become empowered unless he is first informed. Consumer education is therefore of great importance and TPO would encourage the CMA to place a high priority on ensuring clear guidance, drafted in consultation with appropriate stakeholders and distributed as wide as possible, is produced ahead of significant changes in the market taking place.
- 3.3 The CMA may also wish to consider including a specific section on their website dedicated to consumer education. This could prove a valuable resource for consumers and consumer advisor groups.
- 3.4 TPO's experience also indicates that it is sometimes businesses which lack understanding of their obligations. Guidance to firms, produced ahead of significant changes should also be given priority.

3.5 TPO recognises that consumer (and, to an extent, business) education is vital for an efficient, fair and competitive market to exist. Currently many organisations (including TPO), government departments and businesses themselves issue guidance for specific sectors but there is little consistency and no specific responsibility placed on one body to manage this information. TPO would welcome the CMA taking on this responsibility and stands ready to work with the CMA to achieve consistency of advice for the property sector.

The CMA's vision

3.6 Overall, TPO agrees that the CMA's vision adequately describes what the CMA is seeking to achieve, although it is acknowledged that the details of how the CMA intend to achieve this vision have yet to be decided.

Question 2 – Do you have any comment to make on the CMA's proposed strategy or the priorities set out within it?

Statutory functions – enforcement and investigations

3.7 TPO is pleased to note that the CMA intends to work with all stakeholder groups, including regulatory and enforcement partners to develop integrated performance, which will necessarily involve regular communication and enhanced intelligence gathering and analysis.

3.8 TPO also notes the CMA's statutory functions to conduct investigations into markets where there are suspected competition and consumer problems and enforce a range of consumer protection legislation, especially the Consumer Protection from Unfair Trading Regulations 2008 (CPRs).

3.9 TPO already considers the requirements of the CPRs within its investigations and has reported back its findings to the industry, providing guidance and case studies examples to assist their compliance. The Ombudsman's first interim report of this year focussed on the application of these regulations in relation to sales agents <http://www.tpos.co.uk/downloads/reports/Interim-Report-1-2013.pdf>. TPO's second Interim Report, due to be published soon, will also focus on CPRs and specifically how they will impact on letting agents.

3.10 TPO is happy to share its experience and data on CPRs (as well as data and information on other property related disputes) with the CMA. Furthermore, TPO would strongly recommend that the CMA consider regular meetings with TPO and Trading Standards to enable data sharing and discussion of current protection and enforcement issues. Regular meetings will promote a clear and consistent approach towards addressing the problems faced by consumers and firms with the property sector and will assist the CMA in leading policy development.

Fair competition and consumer empowerment

3.11 The CMA recognise that competition works for the benefit of consumers when firms compete fairly and when consumers are empowered, confident and able to exercise informed choice.

3.12 To allow fair competition, firms must first be provided with a level playing field upon which to compete. Currently there are many inconsistencies between sales and letting agents which are not apparent to the average consumer. These inconsistencies become less obvious to the average consumer when an agent provides sales and lettings services from the same office. There are further inconsistencies within those disciplines when national borders are considered. For example the proposed mandatory redress requirement for letting agents only applies to firms operating within England. The Welsh Government has indicated that they intend to implement a licencing regime which will effectively regulate letting agents and the Scottish Government appear to be considering a similar policy. There are also inconsistencies on a regional level, with some local authorities implementing their own licensing regimes. For consumers and firms that operate across these disciplines and territorial boundaries, varying levels of both regulation and consumer protection do not provide an equal basis for fair competition, lead to inconsistency of service and ultimately undermine consumer empowerment.

3.13 The CMA have acknowledged the Government's first draft strategic steer paper which highlighted five issues considered crucial to growth and which it suggested the CMA to consider in developing its strategic and operational plans. The first issue notes taking "...account of consumer behaviour particularly in markets where there are information problems and asymmetries". The asymmetries present within the property sector are the reason for the consistent calls for regulation, especially with regard to the private rented sector. These sentiments have not only been expressed by consumers,

consumer groups and the industry itself, but also by other Government Departments (the Communities and Local Government Select Committee being one).

3.14 Whilst TPO welcomes the proposed mandatory requirement for letting agents to register with a redress scheme, along with many other organisations and market commentators, we consider this to be the first step towards the broader regulation needed to provide firms with an environment which allows them compete on equal terms which, in turn, will provide consumers with a consistency of protection, information and empowerment. Indeed, many of the disputes referred to TPO reveal a lack of knowledge (and thus, empowerment) on the consumers part which, had the firm been subjected to a broader regulatory regime, would have unlikely occurred in the first instance. Along with an often seen lack of general understanding about property transactions, awareness of issues such as the importance of considering whether a firm has client money protection insurance or subscribes to a code of practice support this statement.

Question 3 – Do you have any comment to make on the CMA’s proposed statement of values?

3.15 TPO welcomes the CMA’s statement of values and looks forward working closely with the CMA following its acquisition of its powers on 1 April 2014.

4. General Comments

4.1 Given TPO’s extensive experience of property issues and its prominent position in providing alternative dispute resolution to the property sector, TPO would be pleased to provide assistance to the CMA in this regard throughout both its consultation process and after its acquisition of power next year.

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Property Ombudsman

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The Ombudsman's Terms of Reference, the Codes of Practice, Consumer Guides and other documents about the operation of the scheme are available on TPO's website (www.tpos.co.uk), together with previous annual and interim reports, further explanation of governance arrangements and a full list of registered firms.

USwitch



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Monday 11th November, 2013

CMA Strategy Consultation – uSwitch.com response

Dear Sirs,

As you may be aware, we are the largest energy price comparison service in the UK and we have been helping consumers to save money on their household bills for 13 years now. We campaign regularly on consumer issues, such as transparency, and see ourselves very much as a 'consumer champion' enabling people to get the most out of competitive markets.

We whole-heartedly agree with you on the many benefits of competition and see our role as fostering a healthy competitive environment - helping to educate and support consumers, ultimately to achieve greater engagement. With the current squeeze on household finances there needs to be more consumers proactively shopping around and switching to reduce their costs and get better value, not less as we have seen in some sectors, such as energy, in recent years.

We welcome this consultation on the vision, values and strategy for the CMA – we believe this piece of work provides an excellent blueprint for what the CMA will stand for and what it will seek to achieve. The role of the CMA is a necessary one and the clarity and transparency with which this has been laid out is to be applauded.

We see ourselves not just as a stakeholder, but also as a colleague and support to the CMA's vital work. Because of our role as a trusted intermediary we are able to offer valuable insight into issues and concerns affecting consumers and competition in the markets that we cover, namely energy, telecommunications and personal finance. We will be very happy to share this insight with you and look forward to working with you in the future.

Question 1: Do you agree that the CMA's vision accurately and adequately describes what the CMA is seeking to achieve? Do you have any comment on it?

We agree that the CMA's vision accurately and adequately describes what the CMA is seeking to achieve. We particularly welcome the fact that the CMA has identified extending competition frontiers and refocusing consumer protection as key goals. Competition in the energy market got off to a promising start, but has since seen a significant decline in engagement levels. There needs to be a clear, objective focus on what will make this market work and orchestrated efforts to dismantle the barriers.

It's vital that the regulator, Ofgem, is given every support in delivering the remedies it has identified as part of its Retail Market Review (RMR) and in making swift changes if its remedies are not having a desirable effect. When it comes to the success of RMR, the CMA should take an active role and interest in ensuring that greater consumer engagement, primarily in terms of inter-company switching and secondarily in terms of intra-company switching, is the key measure. This is really the last opportunity to 'fix' the competitive energy market so it is good that the CMA is coming on board at such a crucial time.

We also believe that education has a key role to play in empowering consumers to exercise informed choice. We have consistently urged Ofgem to run a high-profile consumer education campaign to promote competition and we would like to see the CMA add its voice in support of this call. The fact is that there are still many myths and fear factors preventing consumers from engaging and these could be very easily dismissed.

Question 2: Do you have any comment to make on the CMA's proposed strategy or the priorities set out within it?

We agree with the strategy and the way you have so clearly identified the importance of competition, not just for consumers but for the broader economy and UK PLC. More needs to be done to drive efficiency, innovation and smarter business practices.

Within your economic context, you identify the impact of squeezed disposable incomes and the pressure on consumer living standards. Affordability of energy is a particular concern, and while this is not directly within your remit, we think it's important to note that increased competition and consumer engagement could go some way towards solving this issue.

You also highlight the growth in online business and the benefits it can bring, along with the positive impact of price comparison tools. When looking at boosting competition, services like ours are part of the solution – offering consumers free, impartial and independent comparison

tools coupled with support and information so that consumers feel able to make an informed choice.

We recently submitted a response to Ofgem's TPI consultation. Our main thrust was that price comparison services, such as our own, play a valuable role in educating and empowering consumers, with every expectation that this role will grow even bigger in the coming years. In energy, innovations such as smart metering, time-of-use tariffs and energy efficiency will all need to be explained and promoted to consumers – trusted comparison services are well-placed to do this.

We believe it is important that any changes made to the regulatory framework must be made to build trust, prevent 'cowboys' or bad practice from creeping in and with an eye to the future. The energy sector is developing at a pace and we will need room to grow and innovate if we are to continue to provide consumers with the support they need and deserve.

As part of our response we advised that the current Confidence Code needs to be updated. We would like to see Ofgem build on the Code's strengths - keep it high-level and principles-based, rather than prescriptive, but also ensure that it is 'fit for purpose'. The code should allow services to develop and innovate appropriately.

The latter point is important given that you have highlighted digital exclusion as a potential risk to the growth of online markets. We are acutely aware that very often those households who are unable or unwilling to go online are the very ones that need our service most.

As a result we are focussed on broadening our reach so that we can target these groups of customers. We offer a telephone-based, whole-of-market energy comparison service and we were the first to offer a 'Send us your bill' service. This allows consumers to send a copy of their latest energy bill to us, freepost, with their telephone number. We then run a full comparison for them and call them back to talk through their options. This service is particularly popular with older age groups and those who struggle to understand their bills.

Question 3: Do you have any comment to make on the CMA's proposed statement of values?

No comment other than to say that these are exactly as expected and fit with the CMA's vision, role and strategy.

The CMA's work will be vital and we look forward to working with you from next year as a stakeholder, colleague and supporter of healthy competition. We are more than happy to discuss

any of the points we have made above in finer detail if that would help the consultation process.
Please do let me know if we can be of any further assistance.

Yours sincerely,

Steve Weller
CEO, uSwitch.com