

# CMA Strategic Assessment

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## 1. Executive summary

- 1.1 The Competition and Markets Authority's (CMA) mission is to make markets work well in the interests of consumers, businesses and the economy. The assessment that follows aims to identify the key risks to consumers' economic welfare and the efficient functioning of markets across the UK economy to help us focus our resources on issues where we can have the greatest impact, and where we can deliver the best outcomes for consumers.
- 1.2 Whilst the economy is strengthening, consumers face significant pressures on their finances and the prices of essential goods and services are rising. Household debt stands at over £1.4 trillion and the debt to income ratio is forecast to increase significantly in the coming years. An ageing population is forecast to place increasing strain on public services, at a time when expectations around quality are rising and some public sector budgets are reducing. Therefore, across public services there is a need for efficiency enhancing solutions which do not impact adversely on quality. Ensuring affordability and quality in regulated sectors is important, as those sectors provide essential services to virtually all households and businesses in the country.
- 1.3 The UK has the world's most internet-dependent economy, and whilst that brings benefits to many, it also raises risks and creates vulnerabilities. Children are acting as consumers in the online world, time-poor consumers are increasingly relying on online tools for decision-making, and we are seeing the emergence of powerful players in 'gatekeeper' positions. Global online commerce, with businesses operating across multiple jurisdictions, also creates challenges around investigation and enforcement.
- 1.4 Technological developments create the potential for significant efficiencies in supply chains, and disruptive technologies and new business models can bring about innovation, lower prices and greater choice for consumers. It is therefore important that innovation is not stifled and that we understand how technological and other developments are changing markets so that we can consider the opportunities and risks those changes present for consumers and competition.
- 1.5 Finally, since competition between firms is a key driver of productivity and growth in the economy it remains fundamental to our goals that we ensure that those sectors of the economy which can make a significant contribution to growth are characterised by healthy competition.

## 2. Purpose, methodology and structure

### Purpose of the document

- 2.1 This is the CMA's first Strategic Assessment of risks to consumers, the efficient functioning of markets and their contribution to economic growth. Its primary objectives are to inform our medium term (one to three year) priorities and to help focus our pipeline of discretionary work.<sup>1</sup>
- 2.2 The Strategic Assessment itself does not outline the CMA's priorities,<sup>2</sup> nor does it set out markets or issues that we have agreed to commit resources to looking into. Rather, it is a tool which – along with our Prioritisation Principles<sup>3</sup> – will help us identify markets or issues that may be of particular interest on the basis that they display features which may render them susceptible to competition or consumer protection problems, or they provide opportunities for promoting competition for the benefit of consumers.
- 2.3 It is important to note that, in connection with many of the issues identified within this assessment, we have not reached a view as to whether or not markets are working efficiently or whether consumer protection or competition concerns exist; moreover, our thinking and understanding around many of the issues is at different levels of development. The assessment does, however, identify specific areas which – given certain features, conditions, contextual factors or trends – might cause us, at least, to consider CMA attention or intervention either in the near term, or in future.
- 2.4 In seeking to determine what work to take forward, we will look at where the CMA individually, or working with partners, can have the greatest impact, and add most value. We will consider carefully whether we or others are best placed to address an issue, or whether we can work jointly with partners across the consumer, competition and regulatory landscape to bring the most appropriate skills and knowledge to bear.

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<sup>1</sup> In a number of areas – such as merger control, regulatory references and appeals - the CMA has no discretion as to whether or not to undertake work. Much of the CMA's resource is committed to work in such non-discretionary areas, and to existing projects which are forecast to continue through 2015.

<sup>2</sup> The CMA's strategic priorities are set out within its Annual Plans.

<sup>3</sup> [CMA Prioritisation Principles](#).

## Methodology

### *Identification of issues*

2.5 We have sought information and insight from a range of sources to inform this assessment. This includes intelligence and insight obtained from the CMA Board and CMA staff; research, intelligence and insight from a range of organisations including enforcers, regulators, other government departments, international counterparts, stakeholders representing consumers and businesses and specialists in consumer and competition issues.

### *Filtering of issues*

2.6 The issues which are considered within this assessment have been included for one or more of the following reasons:

- The issue has already been identified as a strategic priority for the CMA to have regard to.<sup>4</sup>
- There are indications that a particular market may not be working well, or indications that a practice may not be in the best interests of consumers. For example, the CMA, other enforcers or regulators or international agencies have already identified risks in the course of their investigations.
- The potential for consumer harm is significant:
  - Certain consumers may be particularly vulnerable or disadvantaged or the impact may be disproportionate on a particular group of consumers.
  - The goods or services in question are ‘essentials’.
  - There is potential for consumer biases to be systematically exploited.
- It can reasonably be inferred that the market is or will become more significant for consumers and/or the economy.
- There are risks that the market may not meet its full potential, for example because of potential barriers to innovative new entry; or, there are opportunities for further opening up the market and promoting competition for the benefit of consumers.

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<sup>4</sup> As set out in the *Government statement of strategic priorities for the CMA* and the *CMA Annual Plan*.

- The market is important, making a significant contribution to the economy, such that, should problems arise in future, this could have an adverse impact on economic growth.
- 2.7 None of these issues alone will necessarily justify CMA attention or intervention, rather those issues will be considered as the CMA assesses proposals for action against its prioritisation principles. In doing so, we will consider whether the CMA – individually, or working with partners – is likely to be best placed to tackle an issue, and is likely to add value and make a real impact.

## Structure

- 2.8 **Chapter 3** outlines the context within which this assessment has been conducted, taking into account the economic, political and regulatory climate. It also considers how consumers are currently spending their money, and their main concerns.
- 2.9 **Chapter 4** focuses on underlying characteristics of markets which may weaken or harm competition, including market structure, conduct of market participants, anti-competitive agreements, consumers' behavioural biases and their potential for exploitation by firms.
- 2.10 **Chapter 5** sets out the key findings from our assessment of risks and challenges. It considers:
- Factors that may inhibit consumers' ability to access markets or derive the benefits available, and factors that may affect consumers' decision-making.
  - Risks and challenges in:
    - Online markets and the digital economy.
    - Emerging sectors/business models and high technology.
    - Regulated sectors and infrastructure markets.
    - Public services markets.
  - It also considers markets which are significant for growth. Whilst not identifying specific risks, it provides a view of some markets of potential interest, given their economic significance.
- 2.11 **Chapter 6** sets out our conclusions.

### 3. Context and outlook

- 3.1 This section outlines the context within which our assessment has been conducted, taking into account the economic, political and regulatory climate. It also considers how consumers are currently spending their money, the pressures they face, and their main concerns.
- 3.2 In November 2012 the Office of Fair Trading (OFT) published its Strategic Assessment of risks to UK consumers and markets.<sup>5</sup> Whilst many of the issues identified in the OFT's assessment remain relevant today, the context for our 2014 assessment has evolved. Whilst the economy is strengthening and business confidence has grown (notwithstanding uncertainties around political and economic conditions in the UK and at EU level)<sup>6</sup> consumers face significant pressures on their finances. In contrast to previous recessions, the rise in unemployment linked to the 2008-09 recession has been small relative to the fall in Gross Domestic Product (GDP), but real earnings have not held up.
- 3.3 Pressure on living standards is expected to continue, driven by the slow pace of household income growth, prolonged low returns on savings, pensions and annuities, rises in the prices of essential services and, in due course, widely predicted increases in interest rates. This is likely to fuel affordability pressures as well as driving continued growth in unsecured lending. Household debt stands at over £1.4 trillion and the debt to income ratio is forecast to increase significantly in the coming years, nearing pre-financial crisis levels by 2019.<sup>7 8</sup>
- 3.4 Output has risen consistently since the autumn quarter of 2009 and Consumer Price Index (CPI) measured inflation is currently running well below the Bank of England's 2% target. However, improvements in productivity have not been as positive. Whilst consumer spending continues to be a significant driver of growth<sup>9</sup> the Bank of England has stressed that the outlook for consumption ultimately depends on the pace of household income growth, which in turn depends on developments in employment and productivity. Business investment has picked up and continues to improve<sup>10</sup> although

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<sup>5</sup> *OFT strategic assessment of risks to UK consumers and markets*.

<sup>6</sup> Including uncertainty around the outcome of the General Election in 2015 and future EU membership.

<sup>7</sup> Bank of England *Statistical Release*, July 2014.

<sup>8</sup> See *Budget 2014* – HM Treasury, paragraph 37.

<sup>9</sup> *Office of National Statistics (ONS) consumer trends, Q2 2014*. In Q2 2014, household spending (adjusted for inflation) grew by 0.6% (£1.5 billion).

<sup>10</sup> *ONS Business investment, Q2 2014*. In Q2 2014, business investment was at its highest level (£45 billion) since Q2 2005.



some concerns have been expressed regarding export performance.<sup>11</sup> HM Treasury's comparison of independent forecasts for the UK economy, published in October 2014, reported that the average independent forecast for GDP growth was 3.1% in 2014 and a further 2.6% in 2015.

### ***Economic policy and growth agenda***

- 3.5 The government's economic policy objective is to achieve strong, sustainable and balanced growth that is more evenly shared across the country and between industries.<sup>12</sup> Although economic expansion has been broadly based, the UK economy remains heavily services based in terms of both output and employment. Knowledge intensive sectors now account for a third of UK output and over a quarter of total employment.
- 3.6 As set out in its *National Infrastructure Plan* the government has put long-term investment in roads, railways, energy and telecommunications at the heart of its growth plan.<sup>13</sup> Strategies in other sectors, including information services, professional and business services, the automotive sector and construction play a further, significant role in the growth agenda.
- 3.7 Through its *Fair and Effective Markets Review* into the way wholesale financial markets operate, the government is also seeking to raise standards of conduct in the financial system, recognising that strong and successful financial services that set the highest standards are an essential part of building a resilient economy.<sup>14</sup>

### ***Consumer spending and concerns***

- 3.8 In Q1 2014, household spending (adjusted for inflation) grew by 0.8% (£2 billion). Household spending, when compared with the same quarter a year ago, has been rising each quarter since Q1 2012.<sup>15</sup>

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<sup>11</sup> [UK Trade, July 2014](#).

Seasonally adjusted, the deficit of trade in goods and services for July 2014 was £3.3 billion, compared with £2.5 billion in June 2014.

<sup>12</sup> The government has set out four ambitions for helping the economy grow: to create the most competitive tax system in the G20; to make the UK the best place in Europe to start, finance and grow a business; to encourage investment and exports as a route to a more balanced economy; and, to create a more educated workforce that is the most flexible in Europe.

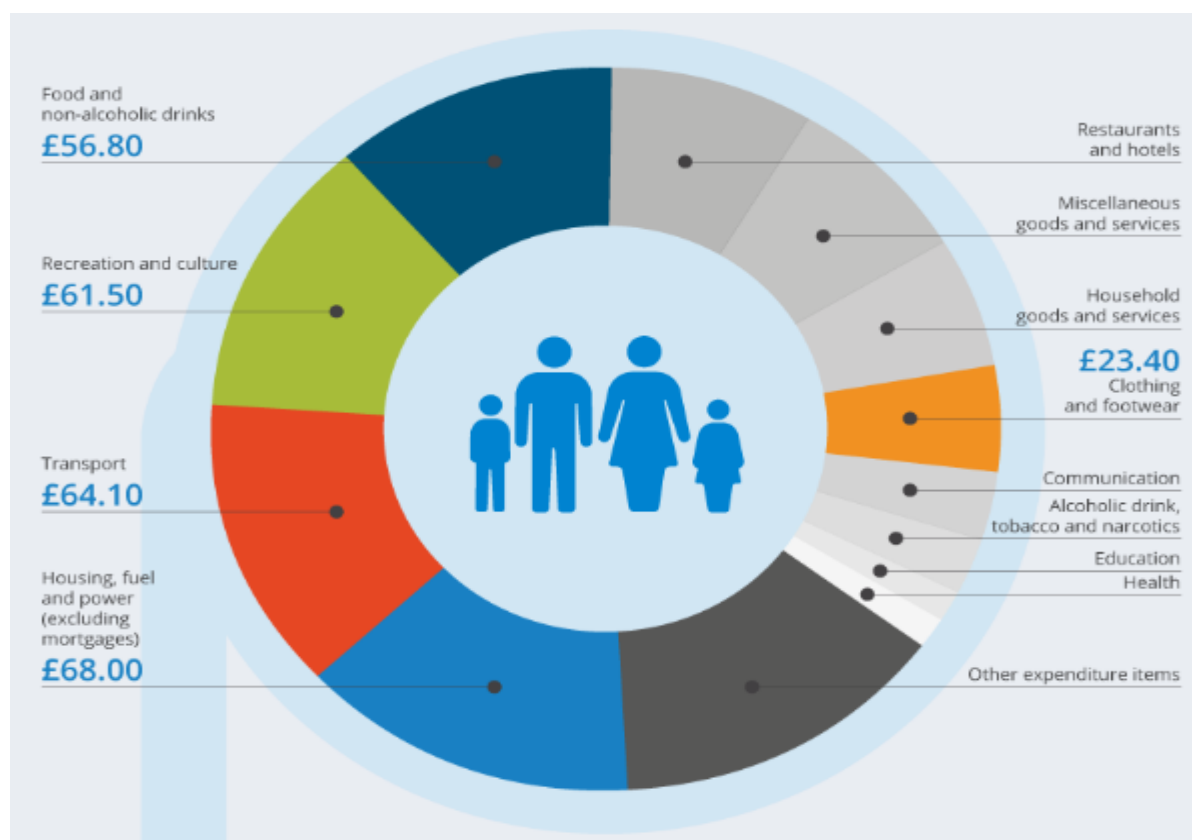
<sup>13</sup> According to the Civil Engineering Contractors Association UK GDP could have been 5% higher, on average, each year between 2000 and 2010 if its infrastructure had matched that of other leading economies. See [National Infrastructure Plan 2013](#).

<sup>14</sup> A [joint review](#) by HM Treasury, the Bank of England and the Financial Conduct Authority.

<sup>15</sup> ONS, *Consumer Trends Q1 2014*, 27 June 2014.

**Figure 1: Family spending in 2012** (Source: ONS, released 11 December 2013)

**Average spend per week = £489**



3.9 Recent research indicates that consumers are most worried about energy, fuel and food prices and that consumer distrust is highest for car dealers, gas and electricity, longer term financial products and day to day banking.<sup>16</sup> Figure 2 provides a breakdown across the devolved nations and South East England.

**Figure 2: Which industry sectors/organisations do people most trust and distrust** (Source: Which? *Consumer Insight Tracker*, October 2014) Most distrusted sector appears in top row.

South East England	Northern Ireland	Scotland	Wales
Car dealers	Longer term financial products	Car dealers	Car dealers
Gas and electricity	Car dealers	Gas and electricity	Gas and electricity
Longer term financial products	Mobile phone services	Day to day banking	Trade services
Day to day banking	Gas and electricity	Longer term financial products	Longer term financial products

<sup>16</sup> Data from Which? *Consumer Insight* <http://consumerinsight.which.co.uk/> October 2014 data.

- 3.10 Concerns about the delivery of essential services have been identified across the European Union, with the European Commission finding that sectors such as banking, telecoms and retail energy ‘continue to fail EU consumers’.<sup>17</sup>
- 3.11 Between April and June 2014 the issues which were the top cause for complaint to the Citizens Advice Consumer Service were recorded as: second hand cars (most complained about with 17,988 issues recorded over the quarter), home maintenance and improvements, furniture and telecommunications.<sup>18</sup> The service notes significant increases compared to the same quarter the previous year in relation to calls about credit brokers and slimming products and services. Citizens Advice Scotland reports similar issues for the period April 2013 to March 2014 from Scottish consumers (in terms of the issues generating most complaints to the consumer helpline).<sup>19</sup>

### ***Regulatory and policy environment***

- 3.12 The establishment of the CMA has been part of wider reforms to the competition, consumer and regulatory landscape which also includes the establishment of the UK Competition Network (UKCN), changes of responsibilities for consumer credit regulation and consumer protection and the creation of a new Payment Systems Regulator.
- 3.13 At European level, on 1 November 2014 a new European Commission officially started its term of office, which will run until 31 October 2019.
- 3.14 There are various proposals before Parliament to extend the availability of redress for consumers: as individuals for misleading actions and aggressive practices under the Consumer Protection from Unfair Trading Regulations 2008, via enforcers under the Enhanced Consumer Measures provisions of the Consumer Rights Bill, and through implementation of the Alternative Dispute Resolution Directive (ADR) which aims to increase the availability of ADR within the UK for goods and services transactions. The Private Actions in Competition Law proposals under the Consumer Rights Bill will make it easier

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<sup>17</sup> [European Commission 10<sup>th</sup> Consumer Markets Scoreboard 2014](#). The report notes that despite improvements since 2012, utilities markets, in particular electricity and gas, continue to score poorly on comparability of offers, choice of providers, ease of switching and actual switching.

<sup>18</sup> [Advice Trends](#) – Citizens Advice, issues recorded at Tier 2.

<sup>19</sup> As set out in [Consumer Snapshot – Advice Trends in Scotland](#).

for consumers and businesses who have suffered harm from competition breaches to obtain redress.

- 3.15 Following the 'No' vote in Scotland, the Prime Minister announced that a package of further devolution measures is to be drawn together. The outcomes of the 2015 general election, and a potential referendum on the future of the UK's membership of the European Union may herald further policy and regulatory developments.

## 4. Characteristics and behaviours that may impact on the efficient functioning of markets

- 4.1 Competition between firms drives productivity and growth in the economy. It forces firms to innovate and rewards the most efficient. Competition benefits consumers by providing greater choice, better quality products and services and keeps prices down. Confident, informed consumers drive competition by making well-reasoned purchasing decisions; therefore, empowering consumers to exercise informed choice, using both competition and consumer powers can help markets work well.
- 4.2 In looking to identify markets where competition may not be working well, or where it could be improved for the benefit of consumers, we take into consideration underlying features of markets which may harm competition. Structural features may include high concentration giving businesses market power over customers, high entry barriers and common ownership of competing facilities. Where a firm holds market power, certain conduct features may be a concern. This includes exclusionary behaviour, for example vertical restraints or refusals to supply which are likely to dampen competition and conduct which exploits customers or suppliers, for example, excessively high prices. Competition in a market can also be restricted by agreements between undertakings which have as their object or effect the prevention, restriction or distortion of competition.
- 4.3 Well-functioning markets also require an effective demand side, with consumers being good at buying the best products for them, at the best prices. For this, consumers need to be able to access information, assess information and then act on that information.
- 4.4 Consumer decision-making is not always fully rational, and may be limited by factors such as the time consumers have available to make decisions and consumers' ability to process and compute the information. Consumers may also be influenced by how things are presented and tend to be poor at predicting the future. In short, consumers may exhibit behavioural biases. Concerns may arise where firms exploit such biases to create or worsen blockages in accessing, assessing and acting on information.<sup>20</sup>
- 4.5 Some groups of consumers may have greater difficulty collecting, processing and acting upon information than others, and therefore may have greater difficulty exercising choice effectively. These may be considered vulnerable

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<sup>20</sup> For a discussion on the use of behavioural economics by the CMA see speech by Dr. Mike Walker, Chief Economic Adviser at the CMA, to Pinsent Masons Annual Competition Law Conference, 11 November 2014.

consumers and may include, for example, young consumers (who lack the benefit of experience), some older consumers (studies show that some mental capacities decline with age) and consumers who are time-rushed or distracted (for example, new parents or the recently bereaved). Some consumers may favour immediacy rather than reflecting on purchase decisions. Consumers may also be vulnerable in the context of specific transactions, for example when they make infrequent or expensive purchases or where information asymmetries make it hard to judge quality or value before purchase.

## 5. Risks and challenges

- 5.1 This section sets out key findings from our assessment, to help us determine where to focus our efforts where we have discretion to act, and where the CMA has greatest potential for making markets work well for consumers, businesses and the economy.

### Consumers: access to markets and decision-making

#### *Factors which inhibit consumers' access to markets*

- 5.2 Some consumers, may find that – by virtue of their circumstances – their access to a market is restricted, or they are faced with less choice or higher prices. For example, according to the Office for National Statistics (ONS), in Great Britain, 22 million households (84%) had internet access in 2014 (up from 57% in 2006).<sup>21</sup> However, a significant minority (although lower than elsewhere in Europe) remain 'digitally excluded', potentially losing out on the benefits of increased choice and lower prices that the internet can bring.<sup>22 23</sup>
- 5.3 In 2013 Consumer Futures identified four types of 'poverty premium' (a situation in which consumers on the lowest incomes pay more per unit for goods and services than more affluent consumers): paying higher than average utility tariffs, paying more per unit of consumption due to lower consumption levels, paying high interest on consumer credit and paying more because of limited financial and communication capabilities - if people cannot pay by direct debit, or access the internet, they can end up paying more.<sup>24 25</sup>
- 5.4 Competitive markets will not necessarily produce outcomes that would be universally considered fair. While it is not the CMA's role to bring about social justice, or redistribute wealth among consumers, we do have a role in making markets work well for all consumers, including vulnerable ones.

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<sup>21</sup> [ONS Internet Access – Household and Individuals 2014](#).

<sup>22</sup> The government is seeking to develop skills and capabilities to enable the digitally excluded to be able to realise the benefits of the internet.

<sup>23</sup> Research conducted by the Centre for Economics and Business Research in connection with the Keep Me Posted campaign's *Household Premium Report* (July 2014) found that households who do not use the internet pay an average of £440 more a year for their goods and services, equivalent to 4.4% of their average household income and that this equates to 5.4% of the average household income for older people aged 65 plus and the most vulnerable people in society.

<sup>24</sup> Consumer Futures (2013) *Addressing the poverty premium: approaches to regulation*.

<sup>25</sup> In 2013 Consumer Futures estimated that the poverty premium (in utilities and financial services sectors) can add 10p to costs for every £1 spent overall by low income households.

- 5.5 In October 2014, the CMA published its report on *Problem Debt*, which was commissioned by the Consumer Protection Partnership (CPP).<sup>26</sup> The report found that problem debt can restrict consumers' access to products and services, and can limit their ability to engage fully in certain markets.
- 5.6 Given that problem debt is one of the most significant problems for consumers in the UK today, the CPP is committed to keeping matters in relation to problem debt under review. In addition to ongoing review by the CPP of problem debt, the CMA intends to consider further practices or markets that may generate particular problems for consumers on low incomes. In this context, issues that may arise include the 'poverty premium'; access to markets, in particular whether access is hindered by a lack of enabling products and services (such as direct debits, internet connection, transport) and/or whether other aspects of a consumer's profile (such as credit rating) act to exclude low-income consumers from markets; whether low-income consumers are particularly prone to exploitation and/or targeting by businesses and the frequency and consequences of any such activity; and whether they face particular problems in obtaining redress when things go wrong.

### ***Practices which distort or act as a barrier to decision-making***

- 5.7 In order to drive effective competition in markets, consumers need to be able and willing to access information about the various offers available, assess this information to identify the goods and services that provide the best value and quality, and act upon this assessment by choosing or switching to their preferred supplier.
- 5.8 Whilst a lack of information or the opacity of information is a concern in certain contexts, ever-increasing choice enjoyed by consumers means more information to process, which may lead to information overload. In turn, this may make it difficult for consumers to make informed decisions. Certain business practices may compound this difficulty. In Chapter 4 we outlined how consumers' behavioural biases can impact on consumer decision-making. Firms may exploit these biases to encourage consumers to take decisions that may not be in their best interests.
- 5.9 Decision-making may be affected by practices such as complex tariff structures; drip pricing, complex, confusing or misleading pricing practices and special offers; lengthy, unclear or hidden contractual terms; advertising

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<sup>26</sup> [www.gov.uk/government/publications/problem-debt-report](http://www.gov.uk/government/publications/problem-debt-report).



techniques that focus consumers' attention on specific features and away from others; and packaging products into complex bundles.

- 5.10 Such practices make it harder for consumers to find the right information, make comparisons, evaluate rival offers and choose the best deal. Problems may be further exacerbated in markets characterised by information asymmetries and/or newly opened up markets where consumers have not traditionally been able to make their own choice (such as health and social care) or where decisions are being made in difficult circumstances.
- 5.11 A willingness and ability to switch supplier has potential to allow consumers to optimise their choices and exerts a competitive pressure on suppliers. However, there is much about switching (and non-switching) which is unclear, including the proportion of consumers who, in fact, switch to a poorer deal; stubborn non-switchers and what holds them back from switching; and the extent to which the threat of switching leads providers to improve their offers and try to retain custom. In some markets, competition can encourage the proliferation of business models designed to exploit consumers' behavioural biases in a 'race to the bottom'.<sup>27</sup> So, levels of switching in markets characterised by these practices do not have the normal disciplining effect that they do in markets where competition encourages a 'race to the top'.<sup>28</sup>

### ***Role of technology and intermediaries in decision-making***

- 5.12 A range of services and tools have emerged (especially on the internet) to assist consumers through the decision-making process. Examples include search engine results, price comparison websites, peer reviews/feedback and online trusted trader schemes. Research suggests that such sources of information play an important role in consumers' decision-making.<sup>29</sup>

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<sup>27</sup> See speech by Alex Chisholm, [CMA: how we intend to use market investigations to extend the frontiers of competition](#) which highlights the Competition Commission's Payment Protection Insurance (PPI) investigation in 2008. This found that PPI was mostly sold at the point where customers took out a loan. There was very limited competition or shopping around at that stage, and providers were making huge profits on PPI, with returns on equity of around 500%. Many providers argued that they were using these profits to cross-subsidise the price of loans, because this is what customers focussed on. So they were essentially 'baiting' customers with low interest rates on loans, and then recouping their losses by cross-selling low-value PPI at high prices. Some suppliers recognised that this model was somewhat flawed, but they stressed that they had no choice – any attempt to offer more cost-reflective prices for credit and PPI would only result in a lower market share and lower profits.

<sup>28</sup> See, for example, *Consumer Behavioural Biases in Competition - A Survey, Final Report* (OFT1324, May 2011, Huck, Zhou, London Economics, Duke).

<sup>29</sup> For example, *Deloitte Consumer Review 2014* (2,000 UK adults, online survey): 81% of respondents read customer reviews/ratings and 40% post reviews/ratings of products or services; *Ofcom 2014* (1,642 UK adults, in-home interviews): more than half (56%) say they always, or often read online reviews about products available to buy online, while half always, or often, read online reviews about holidays or hotels.

- 5.13 There are a number of benefits to such services, including reduced search costs. However, decision-making can become distorted, and trust eroded, if consumers are presented with poor quality, untrustworthy or incorrect information, and ultimately consumers may make wrong purchasing decisions. Concerns focus on the reliability and impartiality of information being presented (for example, false, paid for or otherwise-influenced reviews,<sup>30</sup> lack of transparency over suppliers' links with platforms) and consumers' over reliance on it. Concerns may also arise if consumers are led to focus too much on price, and not enough on product features, quality or service.<sup>31</sup> Risks may arise where consumers are distracted from important product features or negative feedback about a product. The risks are potentially exacerbated for time-poor consumers.
- 5.14 It has been speculated that consumers will increasingly turn to specialist intermediaries – in such circumstances consumer trust is critical to their success, since the consumer may not be able to easily verify that they got the promised best deals.

### ***Refocusing consumer protection***

- 5.15 In connection with the issues outlined above in this section, and more generally, we will focus on areas where there is evidence of widespread or endemic practices that negatively impact on consumer decision-making or choice. This is in line with our consumer protection role in the new landscape and our strategic goal to refocus consumer protection.<sup>32</sup> We will also work with partners in the CPP to address issues that have been identified as priorities for collective action, including the use by firms of unfair terms and conditions.

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<sup>30</sup> According to a report commissioned by the European Commission in the hotel sector, the 'majority of national authorities/European Consumer Centres and consumer organisations consider the issue of fake or misleading reviews to be a "growing problem"' (European Commission *Study on Online Consumer Reviews in the Hotel Sector*, June 2014).

<sup>31</sup> In a thematic review into price comparison websites (PCWs) in the general insurance sector, the [Financial Conduct Authority \(FCA\)](#) found that the websites did not always ensure that consumers were given the appropriate information to help them make informed decisions. The FCA was concerned that consumers' focus on headline price and brand when using PCWs could distract from crucial product features such as policy coverage and terms.

<sup>32</sup> See *CMA Annual Plan* and [Consumer protection: guidance on the CMA's approach to use of its consumer powers](#).

## Online and the digital economy

- 5.16 Figures from the ONS show that, in 2012, the value of sales by businesses over a website amounted to £164 billion in the UK.<sup>33</sup> According to research published in 2012, the UK has the world's most internet-dependent economy.<sup>34</sup>
- 5.17 As well as bringing significant benefits for consumers in terms of increased choice, lower costs and more innovation, continued rapid expansion of the internet and increased engagement between consumers and businesses online also raises risks and creates vulnerabilities. Some risks have materialised and others are emerging, as activity in the online and digital environment evolves. Children are also acting as 'consumers' in the online environment.
- 5.18 Global online commerce, with businesses operating across multiple jurisdictions, creates challenges around investigation and enforcement, rendering effective international co-operation between enforcement agencies essential.<sup>35</sup> As online and digital models evolve and outpace 'traditional' regulatory responses, this increases the risk of gaps in regulation and enforcement.<sup>36</sup> Given rapid change, with new firms and services entering markets all the time, we need to understand developments and their implications, especially where there is potential for consumers to be harmed. At the same time, hasty regulatory interventions may hamper the development of new markets which may provide significant benefits to consumers. Therefore, our role is to carry out a careful analysis of issues before taking action.
- 5.19 In a number of areas risks have materialised, and are likely to remain of interest. These include:
- **Restrictions in competition in online distribution of goods.** Resale price maintenance (RPM) allegations feature frequently in complaints; there are also concerns around the use of internet minimum advertised pricing (IMAP) and online sales bans. In March 2014 the OFT issued infringement decisions under the Competition Act 1998 in connection with

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<sup>33</sup> *ONS Statistical Bulletin: E-commerce and ICT Activity*, 2012, 04 December 2013.

<sup>34</sup> Boston Consulting Group *The Internet Economy in the G-20*, March 2012. The report notes this equated to 8.3% of the UK's GDP (based on 2010 data).

<sup>35</sup> The CMA plays an active role in both the European Competition Network and Consumer Protection Cooperation Committee at EU level and International Competition Network and International Consumer Protection and Enforcement Network.

<sup>36</sup> By way of example, the government has announced that it will consider the risks and benefits of currently unregulated digital currencies. See: [www.gov.uk/government/speeches/chancellor-on-developing-fintech](http://www.gov.uk/government/speeches/chancellor-on-developing-fintech).

online sales and advertising restrictions in the mobility aids sector. Price parity and price relativity agreements have also been the focus of a number of antitrust cases domestically and internationally.<sup>37</sup>

- **The role of gatekeepers, and antitrust issues raised in internet ecosystems.** Certain features in an internet environment – notably powerful network effects, economies of scale, the role of patents, vertical integration – have the potential to raise antitrust concerns, including through markets ‘tipping’ to online platforms with market power. This may raise barriers to entry, making it difficult for new players to enter a market; concerns may also arise where market power built up in one area is used anti-competitively to dominate another part of the sector or market.

5.20 As noted in paragraph 5.18, in some areas, we need a better understanding of developments and practices, considering both the potential benefits and risks to consumers; for example, the CMA is working on a research project to identify sectors of the economy where online commerce is developing more slowly than might be expected. Examples of other areas which are evolving rapidly and may benefit from greater understanding of risks and benefits include:

- **The commercial use of personal data.** Consumers’ personal data is becoming an increasingly valuable commodity to business. One estimate suggested that the value extracted from European consumers’ personal data was worth €315 billion in 2011 and has the potential to grow to nearly €1 trillion in 2020.<sup>38</sup> Whilst there are potential benefits – for example in the form of product improvement or targeted service offerings which may reduce search costs – there are concerns around the way in which data provided by the consumer has become a potential source of competitive advantage and/or market power and the extent to which consumer trust in online markets may be undermined if they cannot exercise greater control over its use.
- **The sharing economy (peer to peer/collaborative markets).** It has been estimated that the UK’s sharing economy could deliver revenues of £9

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<sup>37</sup> Price parity agreements – sometimes referred to as most favoured nation clauses (MFNs) – involve a supplier and a retailer agreeing that a product or service that a supplier sells through that retailer will not be sold at a lower price elsewhere. In September 2014 the CMA published details of the measures it expects to increase competition in the car insurance market, including a ban on agreements between price comparison websites and insurers which stop insurers from making their products available more cheaply on other online platforms: <https://www.gov.uk/government/news/cma-finalises-changes-for-car-insurance>.

<sup>38</sup> According to research conducted by Boston Consulting Group.

billion a year by 2025.<sup>39</sup> The internet and social media – as key enablers – and (some argue) pressures on the cost of living, are key driving forces behind the sharing economy. Traditional markets are being disrupted by the sharing economy, and new business models are attracting investment across a wide range of sectors, and in some cases, significant publicity. Different sectors are at different stages of maturity but it appears all are forecast for growth. These include peer to peer lending,<sup>40</sup> online staffing, peer to peer accommodation, car sharing and equipment rental. Such developments provide benefits for consumers in terms of greater choice, lower prices and innovation.<sup>41</sup> At the same time, concerns may arise if new models/entrants face anti-competitive barriers to establishing a presence, for example by the activities of incumbents, or regulatory barriers; if dominant platforms emerge and engage in abusive conduct; and, if consumers are not clear about the status and liabilities of parties they are dealing with (sellers and platforms), the level of protection they have and what redress channels are available.

- **Online and online-related areas forecast for significant growth.** Areas such as cloud computing<sup>42</sup> and the Internet of Things<sup>43</sup> are forecast for continuing and significant growth and as such, it remains important to ensure that they are characterised by healthy competition, and deliver good outcomes for consumers.

## Technology and emerging sectors

### *Disruptive technologies*

5.21 Beyond the online environment, ‘challenger’ businesses, innovative business models and new technologies have the potential to disrupt markets and in some cases bring about fundamental changes to supply chains (for example, 3D printing, advanced robotics and developments in the automotive sector). They offer increased choice, innovation and potentially lower prices to consumers as well as contributing to economic growth. However, they may also face anticompetitive barriers to their establishment. It is therefore

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<sup>39</sup> [PWC estimate](#).

<sup>40</sup> The FCA recently introduced regulation for peer to peer lending.

<sup>41</sup> The Department for Business, Innovation and Skills launched a [review of the sharing economy](#) in September 2014. The aim is to assess the social and economic potential of the sharing economy for the UK, and to make recommendations on how this potential can be reached.

<sup>42</sup> The European Commission has estimated that [cloud computing](#) could contribute €250 billion to EU GDP in 2020.

<sup>43</sup> In July Ofcom published a [Call for Inputs](#) to identify issues that might affect the development of the IoT sector.

important that we understand their potential and any barriers to this being realised, along with the opportunities and risks those changes present.

### ***Technology and intellectual property rights***

5.22 The role of patents, licences and intellectual property rights and their interface with competition law continues to receive scrutiny by competition authorities, particularly in high technology sectors, where new products often rely on standards to ensure interoperability between products.<sup>44</sup> The key role of intellectual property rights in high technology sectors, together with consolidation in certain sectors (notably pharmaceuticals) argues for continuing focus to ensure competition works well.

- **Pharmaceuticals sector.** According to the ONS's *Annual Business Survey*, the UK pharmaceutical industry's total turnover in 2012 was £60.1 billion. Manufacture accounted for 26% of industry turnover (and accounted for £13.34 billion of current price Gross Value Added (GVA) in 2013 – approximately 0.8% of the total economy, or just over half the size of the telecommunications industry).<sup>45</sup> Delayed entry of generic medicines can have significant impacts on prices and consumer welfare, and also has implications for firm growth and ability to innovate. Introduction of follow-on drugs to pre-empt generics from gaining market share, and reaching pay for delay deals among branded and generic manufacturers to block or delay entry by generic manufacturers may provide particular cause for concern.<sup>46</sup>

### **Regulated sectors and infrastructure markets**

5.23 Ensuring affordability and quality in regulated sectors is important for consumers, as the regulated sectors provide essential services to virtually all households and businesses in the country. They are also important to the country's economy, together representing around 25% of Gross National Product.<sup>47</sup> Given the characteristics of some of these sectors, they are typically subject to direct regulation.

5.24 The CMA sees an increased role for competition, and for competition law, in the regulated sectors as beneficial for consumers – by way of downward pressure on prices, upward pressure on quality standards and spurs to

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<sup>44</sup> Notably, patent disputes in mobile technology.

<sup>45</sup> <http://www.ons.gov.uk/ons/rel/iop/index-of-production/april-2014/sty-pharmaceuticals.html>.

<sup>46</sup> See for example European Commission cases concerning delayed entry of generics.

<sup>47</sup> Speech by Lord Currie, *Competition policy in regulated sectors*, 30 June 2014.

innovation – and also, through enhanced efficiency, lower costs and improved quality, for the economy as a whole.<sup>48</sup>

5.25 The government's *Strategic Steer to the CMA*, in October 2013, suggested that the CMA should engage in a broad strategic dialogue with the regulators and look for opportunities to promote competition.<sup>49</sup> In December 2013, a statement of intent by the new UK Competition Network (made up of the CMA and sector regulators with concurrent competition law powers) announced that its mission would be 'to promote competition for the benefit of consumers and to prevent anti-competitive behaviour both through facilitating use of competition powers and development of pro-competitive regulatory frameworks, as appropriate'.<sup>50</sup>

5.26 There is scope for the CMA – working with government and other regulators – to be influential in a number of sectors to increase competition. There are also a number of cross-cutting challenges across the regulated sectors:

- **The current climate of opinion.** Since the financial crisis some political, media and public opinion appears less favourably disposed to market competition and more disposed towards regulatory interventions as providing solutions. Linked to this is the challenge of reassuring people that the promotion of competition in the regulated sectors is not at the expense of other policy issues such as safety, security of supply, consumer protection and environmental concerns.
- **The risk of deterring infrastructure investment.** Arguments have been made that increased choice and competition would deter investment in utility infrastructure. Such arguments potentially constrain liberalisation of certain sectors. Ensuring infrastructure financing, in particular subsidies, do not distort competition is a further challenge.
- **Affordability of key services.** The affordability of essential services is currently being considered by the UK Regulators Network.<sup>51</sup> The CMA will also consider this in terms of seeking to promote more competitive outcomes in regulated sectors, including those where there are concurrent competition powers and also regulated sectors where there are no concurrent competition powers.

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<sup>48</sup> [Baseline Annual Report on Concurrency 2014](#).

<sup>49</sup> Department for Business, Innovation and Skills, *Competition regime: response to consultation on statement of strategic priorities for the CMA* (October 2013).

<sup>50</sup> [UK Competition Network Statement of Intent](#).

<sup>51</sup> See *UK regulators Network Work programme 2014/15*.



5.27 As noted above, regulated sectors provide essential services and infrastructure to households and business. The CMA is investigating the **supply and acquisition of energy** in Great Britain in its phase 2 energy market investigation.<sup>52</sup> It has also launched a phase 2 market investigation into the **personal current account** and **SME retail banking sectors**.

5.28 A further area where risks are recognised and which may therefore be of interest is the wholesale financial services sector.<sup>53</sup>

- **Wholesale financial services.** Within wholesale financial services markets anti-competitive practices can have an indirect, but significant impact on consumers. As the Financial Conduct Authority (FCA) notes in its *Wholesale sector competition review – Call for inputs*, a wide range of supply side and demand side factors can prevent, restrict or distort competition.<sup>54</sup> On the supply side this could include constraints that make it harder for providers to enter a market, expand or provide certain services. Demand-side factors can relate to conflicts of interest between the incentives of wholesale agents and their clients. Issues such as benchmark rate setting demonstrate that market confidence can be quickly eroded by poor wholesale conduct. Across the financial system more generally, the existence of institutions deemed ‘too big to fail’ is still regarded as threat to the financial system by some commentators. The CMA has been actively engaging with the government’s *Fair and Effective Markets Review* which is looking into the way wholesale financial markets operate.

## Public services markets

5.29 Successive UK governments have recognised how competition and market based solutions can play a part in public service delivery, with the ability to deliver lower prices, increase efficiency and offer greater choice for consumers. The increasing focus on market mechanisms in public service delivery – including in key areas such as health, education and social care and more recent reforms in areas including probation, rehabilitation and welfare to work – make it essential that effective competition contributes to

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<sup>52</sup> <https://www.gov.uk/cma-cases/energy-market-investigation>.

<sup>53</sup> The CMA would liaise in accordance with its MoU with the FCA, and *Guidance on concurrent application of competition law to regulated industries* in determining what action to take, and who is best placed, if an issue arises.

<sup>54</sup> See also *FCA Risk outlook 2014*.



releasing the potential for productivity growth and service improvement across the UK.

- 5.30 Central, devolved and local government's involvement in public service markets is set against a backdrop of continuing fiscal pressures with consensus on the need to reduce the deficit. According to Office for Budget Responsibility (OBR) projections, UK current public spending is set to fall both in real terms and as a percentage of a consistently expanding GDP (from 41.8% of GDP in 2012-13 to 35.2% of the 2018-19 forecast level).<sup>55</sup> The implications of such pressures have been highlighted for the NHS in England, with a £30 billion funding gap estimated by 2020-21, arising from the mismatch between resources and patient needs.<sup>56</sup>
- 5.31 Demand for public services is rising, fuelled by demographic change. Whilst the 65-plus age group accounts for 17% of the total population of the UK it is expected to rise to 23% of the population (or 17 million) by 2035. According to the Institute for Public Policy Research (IPPR), such changes will have particular implications for social care, producing more people needing care and more carers providing it unpaid. Further, driven primarily by an increase in the number of people aged 65 and over with disabilities, demand for unpaid care will begin to exceed supply by 2017, as Figure 3 highlights.<sup>57</sup>

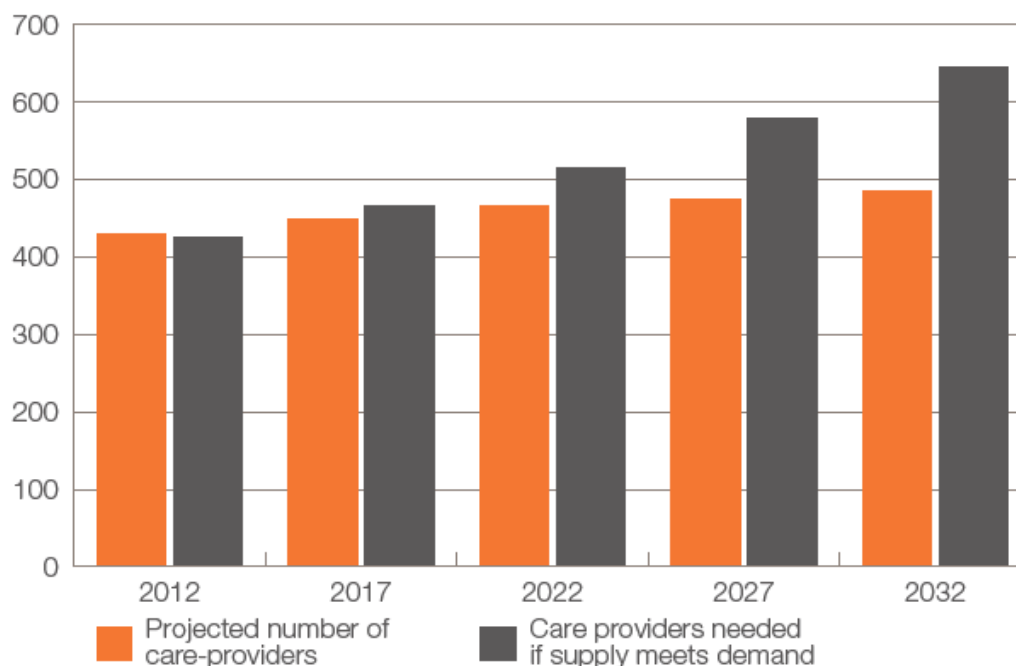
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<sup>55</sup> *Office for Budget Responsibility – Economic and fiscal outlook.*

<sup>56</sup> *NHS Five year forward review 2014.*

<sup>57</sup> *IPPR Generation Strain, April 2014.*

**Figure 3: Caregivers and caregivers required, projections to 2032 ('000s).** (Source: Pickard 2013)



5.32 Problems of planning ahead and the vulnerable nature of consumers who may need to take rapid decisions about care in the context of difficult circumstances add to social care challenges.<sup>58</sup> At the same time, and whilst efficiency savings are being made, the public are increasingly expecting high quality services. Recent research suggest that 56% of people are worried about public spending cuts and 46% are worried about the quality of public services.<sup>59</sup> Therefore, there is a need for changes to the way services are provided which do not impact adversely on quality.

### **Procurement**

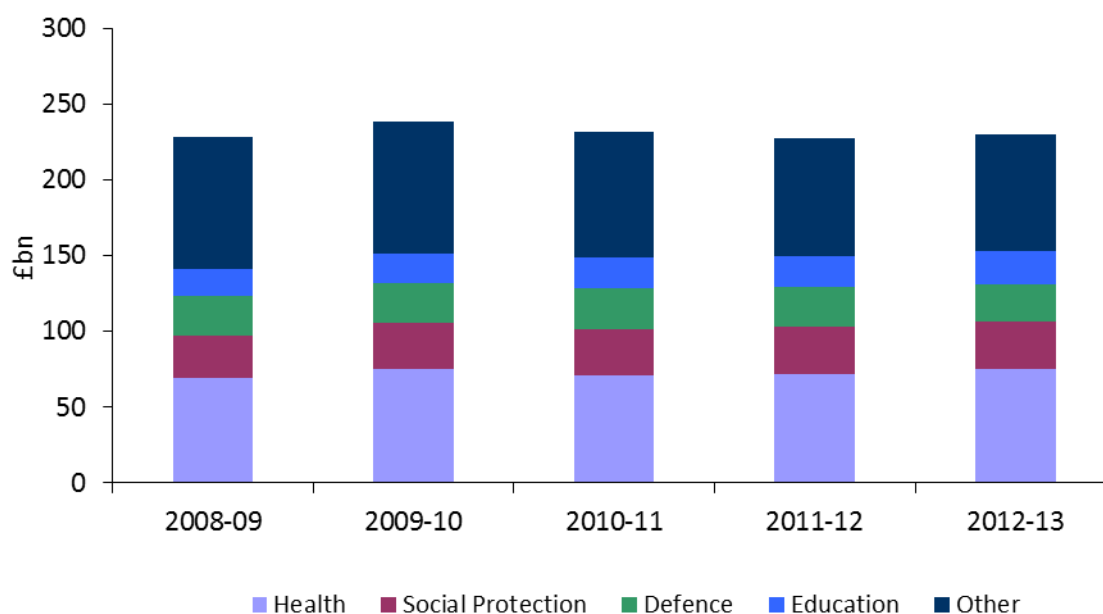
Public sector procurement has been a key element of the government’s growth agenda. The scale of contracting opportunities from government and local authorities is estimated at over £177 billion.<sup>60</sup>

<sup>58</sup> See *Adult social care in England: overview*. See *The Care Maze*.

<sup>59</sup> *Which? Consumer Insight* (September 2014 data).

<sup>60</sup> <https://www.gov.uk/government/publications/growth-dashboard>.

**Figure 4: Public sector procurement expenditure.** (Source: *BIS Growth Dashboard*, July 2014)



5.33 Whilst government has successfully shaped markets through its procurement activities, a number of risks exist. These include:

- **Bid rigging (collusive tendering).** In 2013, the National Fraud Authority estimated procurement fraud arising from the purchase of goods and services across government (including price fixing, bid rigging and cover pricing) cost taxpayers £2.3 billion (£1.4 billion for central government and £876 million for local government).<sup>61</sup> Tenders submitted as a result of collusion will almost invariably infringe competition law.<sup>62</sup> Moreover, the criminal cartel offence applies to individuals in connection with such hard core cartel agreements.<sup>63 64</sup>
- **Commissioning complexities.** Services which are contracted out are often complex with multiple, sometimes conflicting outcomes. On that

<sup>61</sup> [National Fraud Authority, Annual Fraud Indicator, June 2013.](#)

<sup>62</sup> Specifically, Article 81 of the Treaty on the Functioning of the European Union and the Chapter I prohibition of the Competition Act 1998. See Section 3.14 CMA [Guidance on Agreements and concerted practices.](#)

<sup>63</sup> Under the Enterprise Act 2002, as amended by Section 47 of the Enterprise and Regulatory Reform Act 2013.

<sup>64</sup> A person commits an offence if he or she agrees with one or more other persons that two or more undertakings will engage in certain prohibited cartel arrangements, including bid rigging. See [Cartel Offence Prosecution \(CMA9\).](#)

basis, writing complete contracts that fully reflect the desired service is difficult with compromises often having to be struck.<sup>65</sup>

- **Capability issues.** Linked to the above, there have been calls for continued investment in commissioning capability to ensure contracts are awarded following sufficient competition both initially and at renewal stages. The importance of contract management and oversight have also been recognised in ensuring effective service delivery.<sup>66</sup>

5.34 More generally, the increased use of/activity in markets by government also raises potential risks, including:

- **Market design problems.** In general, the outcomes from government activity in markets can take time to observe, with a time lag necessary to test whether original competition assumptions materialise in practice. Risks are likely to arise should low levels of competition be achieved in a given market, as well as when established incumbents become dominant across inter-related markets.
- **Consumer information deficiencies.** Wherever market or quasi market mechanisms operate the existence of information to support choice is vital, particularly where consumers have not traditionally experienced choice in service provision. There are many challenges around providing the right volume/level of information to inform decision making, but 'big data' developments offer the ability to improve.
- **The risk of unequal outcomes** is also significant given the size of some of the markets in question and the vulnerable nature of many of the consumers they serve. In some cases, normal market outcomes may be inconsistent with other public policy objectives.

5.35 The CMA has a role to play in considering whether recently implemented market-based reforms have delivered the benefits of choice and competition in practice. We can advise government on the design of market reforms and also help government to design procurement in a way to reduce the opportunities of bid rigging and to spot bid rigging when it happens. We may

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<sup>65</sup> The government has recognised the need for a more consistent approach to procurement across the public sector. In October 2014, it launched a consultation on possible reforms to public sector procurement to be included within the Small Business, Enterprise and Employment Bill. See [Reforms to public procurement consultation](#).

<sup>66</sup> See [National Audit Office The role of major contractors in the delivery of public services](#). See [Making public service markets work](#).

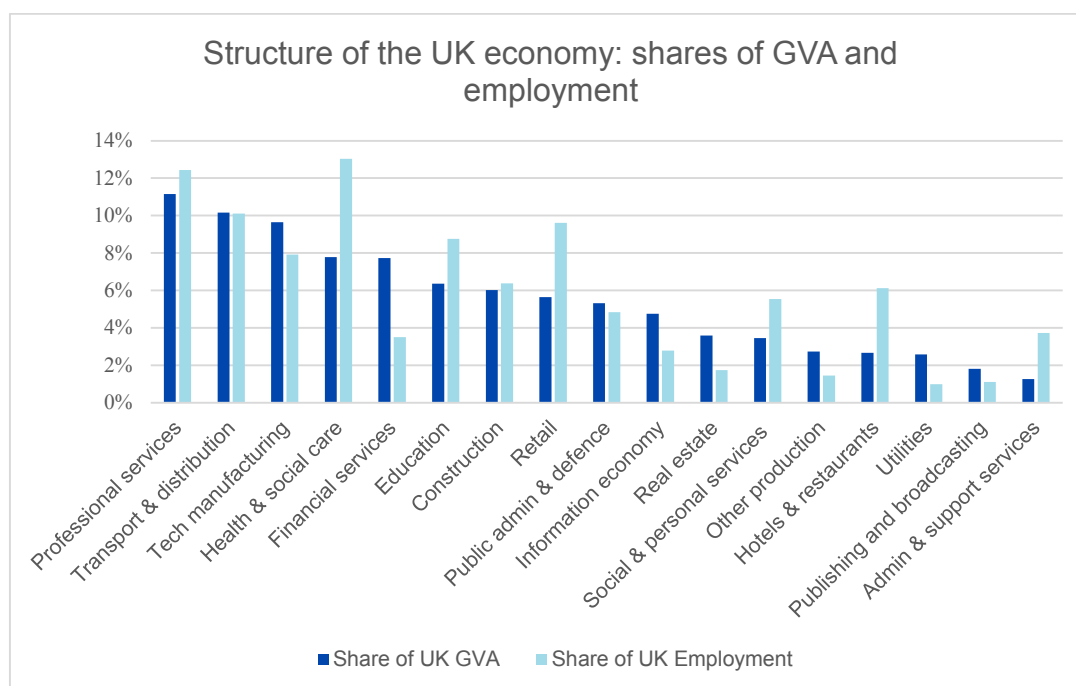
also investigate bid-rigging cases – exclusively under the criminal or civil regime, or under both in parallel.<sup>67</sup>

## Other sectors important to growth and economic recovery

5.36 Since competition between firms is a key driver of productivity and growth in the economy it remains fundamental to our goals that we ensure that those sectors of the economy which play a significant role in the UK’s growth agenda – a number of which have been considered above and others, including those on the chart below – are characterised by healthy competition.

5.37 Whilst not identifying any specific risks, this section provides a (non-comprehensive) view of sectors which may be of potential interest, given their economic significance.

**Figure 5: BIS Analysis of ONS data.** (Source: *BIS Growth Dashboard*, July 2014)



5.38 To illustrate:

- **Infrastructure markets.** According to the Civil Engineering Contractors Association and referenced in the government’s *National Infrastructure Plan*, UK GDP could have been 5% higher, on average, each year

<sup>67</sup> See speech by Sonya Branch, Executive Director, Enforcement, CMA to *Business Crime 2014 Conference*.

between 2000 and 2010 if its infrastructure had matched that of other leading global economies.<sup>68</sup>

- **Retail industry.** The retail industry contributed £151 billion to UK economic output in 2012.<sup>69</sup> The shape of food retailing is changing, with grocery discounters placing pressure on the supermarkets to improve their offers to customers.
- **Construction.** Including construction related services and products and materials the construction industry contributes nearly 7% of GVA and 10% employment.<sup>70</sup> Construction has a large supply chain, accounting for £121 billion of intermediate consumption in 2011. The efficient functioning of the sector is important in terms of addressing housing supply problems.
- **Creative industries.** The creative industries is the UK's fastest growing sector, accounting for 5.6% of the workforce. GVA was £71.4 billion in 2012 and accounted for 5.2% of the UK economy.<sup>71</sup>

5.39 We are likely to consider sectors which are important to economic growth to be of strategic significance when applying our prioritisation principles.

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<sup>68</sup> [National Infrastructure Plan 2013](#).

<sup>69</sup> House of Commons Library, *The retail industry: statistics and policy*, July 2014.

<sup>70</sup> BIS *Growth dashboard*, July 2014.

<sup>71</sup> Department for Culture, Media and Sports *Creative Industries Economic Estimates – Statistical Release*, 14 January 2014.

## 6. Conclusions

- 6.1 This assessment is a tool which informs our medium term priorities and helps focus our discretionary pipeline of work. It should be read alongside our Annual Plans, which set out our priorities and commitments, and other publications which set out our duties.
- 6.2 We are interested both in markets and issues where there may be indications of problems or risks of problems arising, and also in areas that are important to the UK economy.
- 6.3 In practice, there are limits on our discretion to choose our work – for example, because resource is committed to existing work and to fulfil statutory duties. Within those limits, when determining which issues to look at, we will in all cases have regard to our prioritisation principles. The markets and issues considered within this paper will inform our view as to what is ‘strategically significant’ for the purposes of our prioritisation principles. We will also have regard to our prioritisation principles in connection with issues that come to our attention that have not been set out in this assessment.