

Competition and Markets Authority Annual Plan consultation 2015/16

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

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Consultation information page

Scope of this consultation

The consultation is intended to give partner and interested parties the opportunity to provide views and comments on the CMA's proposed Annual Plan for 2015/16, which sets out the organisation's main objectives and priorities for the year.

Alongside this consultation, we are publishing the CMA's Strategic Assessment.

Duration

26 November 2014 to 23 January 2015

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How to respond

Respondents to this consultation are asked to supply a brief summary of the interest or organisations they represent, where appropriate. We ask that any suggested changes or comments on this document be submitted in writing by email or letter by 23 January 2015 at the latest.

After the consultation

We will collate responses to the consultation and publish a formal summary of these, along with a final version of the Annual Plan 2015/16 in March 2015.

Compliance with the Cabinet Office Consultation Principles

This consultation is compliant with the latest Cabinet Office Consultation Principles. The Cabinet Office Consultation Principles criteria can be found at www.gov.uk/government/publications/consultation-principles-guidance

Feedback about this consultation

If you wish to comment on the conduct of this consultation or make a complaint about the way this consultation has been conducted, please write to:

Alex Chisholm
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Contents

	<i>Page</i>
Foreword.....	2
1. Introduction.....	3
2. Strategic assessment.....	8
3. Enforcement.....	10
4. Markets and mergers.....	14
5. Partnership and advocacy.....	18
6. Developing the CMA.....	23
7. Resources.....	26
Annex A: CMA Performance Framework.....	27

Foreword

This draft version of the Competition and Markets Authority's Annual Plan for 2015/16 sets out our plans and priorities for the forthcoming year for consultation.

As we move towards our second year of operation, we can look back with some satisfaction on the work done to bring the CMA into being and to establish it as an effective, efficient body. We are delivering important results as the benefits of institutional and legal reform, extra resources and new ways of working feed through into our cases and our projects. We are working to make real gains for consumers, business and the economy in the markets that matter most to people – such as energy and banking. And we remain committed to delivering benefits to consumers of ten times our cost to the taxpayer.

The core of our work in 2015/16 will be to successfully progress and complete what we have started this year. As well as market investigations into banking and energy, we have opened six new enforcement cases, we will hold the Presidency of the International Consumer Protection and Enforcement Network, and we will be building on our work with the UK Competition Network to increase competition in the regulated sectors.

The importance of this work only underlines the need for us to ensure that we keep up the pace of improvement into 2015/16. We will have further new resources to tackle market problems, and we will be ambitious in using these to better achieve our mission. This will manifest as investment in high quality, integrated performance; better and more productive relationships with our partners; effective advocacy for competition across Government; and greater pace in delivery of our work, whilst maintaining robustness. We will have the benefit of a full year's experience in our role, a fuller complement of staff in post, and far less of the work on change management that an organisation in its earliest days must inevitably focus on.

We look forward to your feedback on this Plan and our proposed approach to our work in 2015/16. The CMA has benefited greatly from the contributions of a range of interested parties to discussions on our powers, policies and plans, and in developing our Strategic Assessment. We look forward to your views and suggestions as to how our Annual Plan for next year can be improved, and how we can move towards our ambition to be consistently one of the leading competition and consumer agencies in the world.

David Currie
CMA Chairman

Alex Chisholm
CMA Chief Executive

1. Introduction

- 1.1 The CMA's Annual Plan sets out our proposed approach to our work in 2015/16. As part of our suite of corporate strategy documents, it sits below our published Vision, Values and Strategy for the 2014–17 period, and alongside our Strategic Assessment of the issues, threats and opportunities arising in markets over the coming years.¹ Our vision and mission, along with our five strategic goals, remain unchanged. These are set out in full at the end of this chapter, and continue to inform all of our choices and decisions. While we are an independent non-Ministerial Government department, we also take account of the Government's strategic steer to the CMA in deciding how to approach our work.
- 1.2 2015/16 will be our second year as the UK's competition and consumer authority, with the processes of transition to the new regime and the establishment of the CMA fully complete. However, the successful completion of this process should not be understood as an end to change in the regime or the CMA – rather, change is a constant, and there will be pressure for further reform next year.
- 1.3 Some of this will be driven by our own commitment to continuous improvement and learning, and our ambition to deliver the best possible return on our work. In the external environment, there are a number of potential drivers of change. There will be a General Election in May, which may be followed by a new Spending Review and changes in Government policy relevant to our role and remit, as well as the possibility that the next Government may wish to issue a fresh strategic steer to the CMA. There are also live debates around devolution of powers within the UK and the UK's place in the EU, both of which may affect the CMA. We stand ready to contribute our expertise and knowledge to these debates where we can help to inform decisions and ensure that policy is as effective as possible.
- 1.4 Other important changes in the external environment will also take effect in 2015/16. For example, the Consumer Rights Bill and the Small Business, Enterprise and Employment Bill are currently before Parliament; these will have an impact on our statutory powers and may also impact on the way we use them. We will be working with a new European Commission from November 2014. And there will be new concurrent competition powers for the Financial Conduct Authority and the new Payment Systems Regulator. We look forward to making the most of the potential that these changes bring for the CMA to increase the impact of our activities for consumers, business and the economy in the application of the enhanced competition and consumer regimes.
- 1.5 The importance of our work to the UK economy is widely recognised, and remains at the forefront of our thinking – effective competition and consumer law are key drivers of

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

economic growth. What we do has the potential to significantly affect the overall economy, and to that end it is vital that we have a strong understanding of the ways in which particular markets and practices interact with growth and other aspects of the economy.

- 1.6 There are a number of features of the macroeconomic outlook for the coming year and beyond that will impact on consumers and markets. The economy and business confidence appear to be growing, but income growth remains slow, household debt is rising and many consumers continue to face significant pressure on their finances.
- 1.7 In our Annual Plan for 2014/15, we committed to produce a new Strategic Assessment of the longer-term risks to UK consumers and markets, following on from similar assessments by our predecessors. That document, published alongside this one, will inform our choices of work and priorities in 2015/16 and beyond; we set out in the next chapter the process by which the findings in the Strategic Assessment will feed into our decisions as to the projects that we will take forward.
- 1.8 The CMA has a wide range of tools available to make markets work well for consumers, businesses and the economy. We deploy these tools in an integrated manner – using a mix of approaches to tackle the harm to consumers from market problems, and collaborating with many different partner organisations to achieve the maximum possible benefit. Our tools include:
 - (a) enforcement, such as prosecution of criminal cartel activity, investigating and taking action against anticompetitive agreements or abuse of a dominant position under the Competition Act 1998, and playing a significant role in the UK consumer protection landscape
 - (b) investigation of markets where there are concerns that competition is not working well
 - (c) consideration of mergers that could lead to harm to consumers or businesses in the form of higher prices, reduced quality or innovation in a particular market
 - (d) ‘softer’ tools such as targeted compliance and awareness-raising initiatives, guidance and advocacy, which we use for example to help firms to comply with the law, and
 - (e) we also have an important role as an appeal body for decisions by the sector regulators.

Priorities for 2015/16

- 1.9 Over the following chapters, we set out what we propose to do in relation to our main areas of responsibility over the course of 2015/16. Overall, building on the important work done in the transition period and in our first year, we expect to deliver further significant improvements in the performance of the competition and markets regime. We will deliver

greater benefits for consumers, businesses and the wider economy. We remain fully committed to our target of generating £10 of direct benefits to the consumer for every £1 that we spend, as set out in the Performance Framework that we have agreed with the Government (see Annex A), and we will continue to report on progress against this target annually.

- 1.10 We also set out in this Plan a number of key commitments and initiatives for 2015/16. These are intended as a challenging, ambitious set of targets to work towards, and are an indication of our priorities for next year – in addition to our performance framework and our other statutory and public commitments. They will not fetter our choices, and where we can better meet those aims and ambitions through reassessing our commitments over the course of the year, we will do so. But our overall vision and mission will remain the same, and our commitments will, when taken as a whole, provide a good yardstick by which our performance can be judged at the end of the year.
- 1.11 We will report on our progress against these key commitments and initiatives in our Annual Report at the end of the year.
- 1.12 Across all of our work, we expect to encounter a range of challenges. Where these can be foreseen, we will mitigate them as far as is possible – for example, by seeking to ensure that our analysis is robust against legal challenge, and by managing our staff and our workload carefully to allow us to deal with changing demands over the course of the year.
- 1.13 However, there are a number of factors that are beyond our control, to a lesser or greater extent, which may impact on what we deliver against our aims and intentions over the coming year. Such factors might include the number and quality of leniency applications that we receive; the extent and nature of the evidence available to us in potential competition or consumer enforcement cases; or the number of merger cases or regulatory appeals that we have to consider, which will be influenced in turn by wider economic trends and the quality of decisions made by others. Where such factors have a significant impact on our delivery over the course of the year, we will note this in reporting on our achievements.

Focusing on Consumers

- 1.14 With our primary duty to promote competition, both within and outside the United Kingdom, for the benefit of consumers, it is essential that the CMA puts consumers at the heart of everything we do. We continue to embed this commitment in our thinking and processes right across the organisation. In our last Annual Plan we made a commitment to improve our understanding of consumer issues and concerns. Since then, we have been working to develop a single and cohesive CMA vision for putting consumers and consumer protection at the heart of our work. This has led us to develop some new ways of working, which we will continue to implement during 2015/16.

1.15 These include:

- **Applying a ‘consumer lens’ to all of our work** by ensuring that we understand the impact on consumers of everything we do throughout the lifecycle of projects
- **Reaching out to a more diverse network for consumer insights** to include more of those who have expertise on the consumer perspective, and those with specific knowledge of vulnerable, hard to reach or less obvious groups of consumers
- **Investing more in our digital engagement capability**, using increased and more sophisticated digital engagement tools to inform intelligence gathering, prioritisation, delivery, testing remedies, communications, and evaluation of our work
- **Providing consumer insights and leadership on consumer issues, nationally and internationally** by engaging experts, academics, and business representatives in discussions on the problems that most affect consumers. We will use our understanding of behavioural economics and markets to improve the collective ability of those within the consumer landscape to address those areas causing most consumer detriment.

CMA Vision

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

Deliver effective enforcement

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

Extend competition frontiers

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

Refocus consumer protection

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

Achieve professional excellence

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

Develop integrated performance

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

2. Strategic assessment

- 2.1 The CMA's Strategic Assessment sets out our understanding of the risks to consumers, the efficient functioning of markets and their contribution to economic growth over the next few years. This section describes how this understanding will inform our decisions and our thinking over the course of 2015/16.
- 2.2 We use our published Prioritisation Principles to inform our decisions as to which cases and projects to progress across our areas of responsibility.² For each prospective piece of work, we balance the potential impact that we can achieve and the strategic significance of the case or project against the inherent risks and resources required. Strategic significance means the extent to which the proposed piece of work fits with our overall strategy, as set out in documents such as our Vision, Values and Strategy (see previous Chapter), our Annual Plan, and our Strategic Assessment.
- 2.3 The Strategic Assessment identifies a number of such risks and challenges for markets, which are grouped under the following themes:
- Factors that may inhibit consumers' ability to access markets, or derive the benefits that should be available to them in doing so, and issues that may affect consumers' decision-making
 - Online markets and the digital economy
 - Emerging sectors and business models, and in particular the effects of technological development
 - Regulated sectors and infrastructure markets
 - Markets for public services
 - Markets with significant potential to affect overall economic growth

Each of these themes is discussed in more detail in the Strategic Assessment itself.

- 2.4 Where prospective work would allow us to deliver outcomes for consumers, business and markets that relates to these key themes, we will likely consider it to be of particular strategic significance for prioritisation purposes. Some potential pieces of work may of course raise issues relevant to more than one of the themes identified. Others may fall outside these areas but fit with the other aspects of our strategy, such as our strategic goals – for example they may present important opportunities to extend the frontiers of

² <https://www.gov.uk/government/publications/cma-prioritisation-principles>

competition or to refocus consumer protection. However, strategic significance is not the only factor we take into account in prioritisation decisions.

- 2.5 Our existing portfolio of cases and projects already includes a number of cases where the themes identified in the Strategic Assessment are relevant and significant – for example, our work on energy and banking touches on several of the themes identified.
- 2.6 It should also be remembered that the CMA’s discretion to choose which cases and projects to take on at any point is not without limits – we balance new cases and projects against other obligations. Most importantly, we are required by statute to deliver certain types of work, such as merger review, regulatory appeals, and super-complaints, and we have no control over the volume of work that we receive in these areas.³ In pursuing our enforcement cases, our choices must be based on evidence that allows us to deliver robust outcomes. And given the need for our analysis to be robust and often complex, our projects necessarily take some time and can thus require more than a single financial year to reach the right conclusions.
- 2.7 We receive far more complaints and intelligence leads than we are able to open new cases, given our finite resources. This makes choosing the right, strategically significant and well-evidenced cases all the more important so that we can deliver maximum benefits to consumers, businesses and the economy. Details of our current cases and projects that are in the public domain can be found on our website.⁴

³ Section 11 of the Enterprise Act (as amended) enables designated consumer bodies to submit “super-complaints” to the CMA where they consider that there is any market feature, or combination of features, such as the structure of a market or the conduct of those operating within it, that is or appears to be significantly harming the interests of consumers.

⁴ www.gov.uk/cma-cases

3. Enforcement

- 3.1 The effective enforcement of competition and consumer law is central to our purpose and our function as an organisation. Successful enforcement means that consumers, businesses and markets are protected from poor practices – not just in the markets where we take cases, but across the wider economy via greater deterrence, increased compliance and better understanding of the law. Delivering effective enforcement is the first of our five strategic goals.
- 3.2 There are high expectations for our enforcement activity for the coming year, and we are ambitious to meet and exceed those expectations. We are well placed to achieve this improved performance given the achievements and investments made in our first year of operation.
- 3.3 We will benefit from having successfully completed our work to transition ongoing enforcement projects from our predecessor, the Office of Fair Trading, and from a full year's experience of 'running in' the reforms made to the competition regime. In our criminal and cartel enforcement, the CMA is increasingly intelligence-led in its detection and enforcement, through an expansion programme and by developing closer partnerships with the police and other criminal enforcement agencies. We are particularly investing in building up our intelligence, investigation and enforcement capacity.
- 3.4 At present we have ten ongoing cases under the Competition Act 1998, having launched four new cases in 2014/15 (in line with the commitment in our first Annual Plan). Our enforcement portfolio is relatively balanced, spanning a broad range of sectors, and covering markets valued widely – from £12m to just under £1bn. This reflects our ambition to deliver a visibly higher level of robust enforcement cases to raise awareness and achieve credible deterrence across the UK economy.
- 3.5 Our portfolio of consumer protection and consumer enforcement projects also spans a broad range of sectors, and we have launched two new projects as well as progressing projects that were opened by the Office of Fair Trading and investing to develop a pipeline of prospective new projects.

Competition enforcement

- 3.6 We will continue to progress our cases quickly and effectively, ensuring that they have the maximum possible impact on deterrence, compliance, and ultimately on the welfare of consumers, whilst maintaining and improving the quality and robustness of our decisions. We are already making the most of the new powers and better ways of working available to us following the Enterprise and Regulatory Reform Act 2013 (ERRA) – for example, we have used new compulsory interview powers, and where appropriate, we are using independent members of the CMA's Panel at key decision-making points in

our investigations – and have a number of streamlining initiatives underway to improve still further the pace and robustness of our processes.

Cartel enforcement

- 3.7 Cartel enforcement remains a particular priority for the CMA in 2015/16. With additional Treasury funding, we are now investing further in capacity to ensure that we can increase the number and speed of cartel cases that we can pursue, and expect to see important benefits from this in the year to come. A dedicated investigation function includes a number of senior investigators and intelligence officers with extensive experience, and we have appointed new senior staff such as a Director of Digital Forensics and Intelligence. Additional funding is also providing for better intelligence via enhanced and more sophisticated digital and forensic capability.
- 3.8 We are increasingly thinking and behaving like other mainstream criminal enforcement agencies, with greater emphasis on intelligence-led work over leniency applications, and larger-scale operations involving multiple partner enforcers. This approach has already led to some significant developments – for example, in our Galvanised Steel Tanks investigation, two men were charged with cartel offences in June 2014 and another pleaded guilty earlier in the year.

Consumer protection

- 3.9 The CMA shares its consumer protection powers with a number of partner organisations. In using those powers, we will prioritise projects where there are systemic market problems or where consumers are unable to exercise choice, or where we can expect to achieve wider impact, for example, by developing the law or by having a deterrent effect. This role complements and reinforces the effects of our other work to improve markets and to support economic growth, by addressing problems where competition enforcement alone does not, or cannot, make a market work well for consumers.
- 3.10 In developing our pipeline of consumer protection work, we will base our consumer protection work firmly on the intelligence we gather on consumer issues, using improved digital capabilities among other tools. We plan to continue to work closely with national and international enforcement partners, including as part of the Consumer Protection Cooperation Network within the European Commission. We will take up the Presidency of the International Consumer Protection and Enforcement Network (ICPEN) from July 2015 to June 2016, which will provide greater opportunities to work with our international enforcement partners across the globe. We will also lead and influence policy development on consumer law, both domestically and internationally, in areas where we have specific responsibility such as unfair terms or where we have particular expertise.
- 3.11 Our consumer protection responsibilities go further than enforcement – as with competition enforcement, our effectiveness also relies on ‘softer’ tools. Alongside our

partners in the Consumer Protection Partnership within the UK, we work to ensure with businesses to ensure that they both understand and comply with consumer protection law. This includes engaging with business in sectors in which we have conducted a market study or other in-depth analysis of business practices, to make sure the implications of the case are understood, and that businesses have the information and guidance they need to comply with the law. We have a particular responsibility to do this in relation to unfair contract terms legislation where we have lead responsibility for providing guidance to business.

Compliance

3.12 Whilst we are committed to high-impact enforcement against firms that break competition or consumer law and cause significant detriment to consumers, we know that the vast majority of firms want to comply with the law. To that end, we will further invest in our compliance programme in 2015/16. We will take the outcomes of successful CMA casework and ensure that relevant businesses and consumers are fully aware of the implications that such enforcement might have, with the aim of amplifying the deterrence and impact of our work to change business behaviour in a positive way. More widely, we will create and implement a strategy to allow us to better tackle the areas where firms' non-compliance is most likely to be causing real detriment. This will be built on a solid foundation of research and casework, which we will use to generate meaningful insights into the factors affecting business behaviour and to target our communications around compliance accordingly.

Key Commitments and Initiatives

3.13 In 2015/16, we will continue to focus on delivering a stream of robust, high-quality enforcement cases and projects, based on strong evidence. This will include a number of cases and projects opened during 2014/15 or beforehand.

3.14 Additionally, in 2015/16, we will:

- Increase the number and speed of cartel investigations that we are able to pursue both criminally and under the Competition Act 1998 (CA98), by continuing to build our intelligence, investigation and enforcement capacity
- Issue proceedings or conclude the investigation in at least one criminal cartel case and, where we have the requisite evidence, open as many new criminal cartel investigations as possible
- Launch as many new competition enforcement investigations as possible where we have the requisite evidence; and as a minimum launch four new CA98 investigations

- Continue to enhance processes and challenge our ways of working so as to decrease the time taken to conclude competition enforcement investigations against a rolling three year average benchmark of previous cases
- Initiate as many consumer protection cases or projects as possible, where we have the requisite evidence; and as a minimum launch three new consumer protection cases or projects. Conclude our consumer protection cases effectively either by agreement or by proceeding to litigation; we will aim for the majority to be concluded within 18 months of being opened
- Maximise the impact of the CMA's enforcement activity and markets work by targeting relevant businesses or sectors to improve compliance
- Make appropriate use of letters or other contacts with companies to follow up on potential breaches of competition or consumer law, which may or may not lead to a formal investigation, in order to raise awareness and promote compliance

4. Markets and mergers

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

Markets work

- 4.2 The CMA has two major market investigations in progress on energy and banking, which are both conducted by groups of independent members from the CMA's Panel and which will continue in 2015/16. Together these sectors constitute a substantial component of the UK economy. For example, there are approximately 65 million active personal current accounts which generate revenues of £8.1bn and in the business banking sector, business current accounts alone generate well over £2 billion in revenue a year. While in the energy sector, the combined value of generation, transmission and distribution exceeds £5.3bn.^{5,6}
- 4.3 The energy market was referred to the CMA by Ofgem, following a review undertaken jointly with the Office of Fair Trading, to focus on supply and acquisition of gas and electricity to domestic consumers in Great Britain. This is the first market investigation to be subject to a new statutory eighteen-month timeframe, and provisional findings of the market investigation are due to be published in May to June 2015, with the final report due to be published in December 2015.
- 4.4 The banking market was referred in November 2014 by the CMA Board to be considered by a group of independent members of the CMA Panel. The investigation covers the supply of retail banking services to personal current account customers and small and medium-sized enterprises. The group is aiming to publish its provisional findings in September 2015, and to publish its final report in May 2016.
- 4.5 In addition to these investigations, we will aim to launch at least four new market studies, calls for information or market investigations in the coming financial year. In line with the

⁵ Including electricity, gas, steam and air-conditioning.

⁶ This figure represents the gross added value of outputs in the sector at basic prices which exclude taxes and subsidies.

Source: Office of National Statistics (2014), Gross Domestic Product by Gross Value Added, Q3 2014:

<http://www.ons.gov.uk/ons/publications/re-reference-tables.html?edition=tcm%3A77-327754>

findings of the Strategic Assessment, we anticipate that the CMA's new markets work will be particularly focused on issues relating to the digital economy.

- 4.6 The payday lending market investigation, where the report is due in January 2015, is considering requiring a number of remedies to be put in place in that sector, to improve transparency of charges and enable shopping around.
- 4.7 We will also deliver appropriate follow-up activity in relation to market studies that we expect to complete over the course of 2014/15, including our market study into the supply of residential property management services, in order to ensure that the full benefits of this work are felt.

Mergers work

- 4.8 Under the Enterprise Act 2002 (as amended by the Enterprise and Regulatory Reform Act 2013) the CMA is obliged to obtain and review information relating to merger situations, and is under a duty to refer for a Phase 2 investigation relevant mergers where it believes that it is or may be the case that they have resulted or may be expected to result in a substantial lessening of competition in a UK market. In practice, the CMA's work on mergers seeks to ensure that the harmful effects of some mergers which can include higher prices, lower quality or reduced innovation in a market are deterred, prevented or remedied.
- 4.9 Notification of a merger to the CMA is voluntary, which means that parties may decide not to notify a merger which the CMA has the jurisdiction to review, for example where they believe that a merger does not raise competition concerns. The voluntary nature of the UK merger regime is unusual internationally and highly prized by business as it ensures that mergers that raise no competition concerns are not unduly held up by regulatory scrutiny. The CMA may seek information about non-notified mergers that it becomes aware of through other routes (such as its own monitoring of market activity or third party complaints). In order to deter anti-competitive merger activity while preserving the benefits of the voluntary regime, the CMA will maintain a balanced and targeted approach to investigating non-notified mergers. It will also review the operation of the use of the Merger Notice where parties notify the CMA of a merger.
- 4.10 In certain circumstances, the CMA may decide not to refer a merger for a Phase 2 investigation even if it believes that it is or may be the case that the merger has resulted or may be expected to result in a substantial lessening of competition in a UK market. The CMA will review its policies relating to exceptions to the duty to refer and its ability to accept undertakings in lieu of making a reference for a Phase 2 investigation. If appropriate, it proposes to consult on revised guidance, including on its approach to the exception relating to 'markets of insufficient importance'.

Remedies implementation, monitoring, enforcement and review

- 4.11 After the CMA makes a final decision to introduce remedies in markets or mergers cases it then has to ensure that these measures are appropriately implemented, monitored and enforced.
- 4.12 The CMA is responsible for all aspects of the ‘remedies lifecycle’, including implementing remedies – for example, by making an Order or accepting undertakings, monitoring and enforcing compliance and reviewing whether remedies remain fit for purpose. The ERRA has put in place statutory timescales for remedies implementation. During the coming year, we will carry out these functions in relation to merger and market remedies in a timely and effective manner, and will also seek to capture the benefits arising from institutional reform in this area of activity.

Regulatory appeals

- 4.13 The CMA is responsible for references and appeals against the decisions of certain regulators,⁷ including the responsibilities conferred by the Health and Social Care Act 2012, the Civil Aviation Act 2013 and the Financial Services (Banking Reform) Act 2013. Regulatory references and appeals historically comprised up to a quarter of the Competition Commission’s workload.
- 4.14 It is not possible to predict which (if any) decisions of which (if any) regulators will be referred or appealed to the CMA. However, significant regulatory decisions in sectors including telecommunications, water, energy, and healthcare are expected towards the end of 2014 and in 2015; it is possible that one or more may be appealed or referred to the CMA in 2015. If so, the CMA will conduct any case in the same way as the CC would have done, consistently with its guidance on the conduct of such cases. In selecting independent members of the CMA’s Panel to consider such cases, the CMA will ensure that there is no conflict between the group’s role as an appeal body and any other roles they are performing for the CMA.
- 4.15 The Government consulted on the future of the regulatory appeals regimes in the course of 2013.⁸ It has yet to announce any decisions arising out of that review. When it does so, the CMA will work with the Government to implement any reform(s) the Government decides to make.

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

⁸ www.gov.uk/government/uploads/system/uploads/attachment_data/file/229758/bis-13-876-regulatory-and-competition-appeals-revised.pdf

Key Commitments and Initiatives

4.16 Across our work on markets and mergers, we deliver high-quality analysis and outcomes to strict statutory timescales, addressing key issues for consumers, businesses and the economy. We will continue to do so next year, whilst continuously working to further increase the pace, quality, and effectiveness of our interventions.

4.17 Additionally, in 2015/16, we will:

- Launch at least four new calls for information, market studies or market investigations in the course of this year where we have the requisite evidence
- Conduct an internal review of the use of the Merger Notice and interim orders in phase 1 merger control investigations
- Start the statutory clock for phase 1 merger review within, on average across all cases, 20 working days of a submission of a substantially complete draft Merger Notice
- Seek to clear at least 60% of merger cases that are less complex (and therefore do not require an Issues Meeting and Case Review Meeting) within 35 working days
- Launch an internal review of the 'exceptions to the duty to refer' guidance for merger control and, if there is a case for change, launch a public consultation on revised guidance
- Implement an integrated approach to the review of merger and market remedies going forward, reviewing our policies supporting the monitoring, review and evaluation of remedies and making improvements where appropriate
- Ensure current merger and market remedies are still fit for purpose, carrying out a project to take stock of the current suite of market and merger remedies

5. Partnership and advocacy

- 5.1 Delivering our mission depends heavily on effective working with our range of partners, and explaining the potential advantages of competition to those whose principal focus is on other policy objectives. In line with our strategic goal of achieving integrated performance we will build ever closer relationships with partners, to ensure that the competition and consumer regimes can deliver the maximum possible benefit with minimal duplication or burden on business.

Consumer Partners

- 5.2 In addition to our own consumer enforcement activity, it is vital for the CMA to work effectively with our consumer enforcement and advice partners to ensure that the arrangements for working together are understood and work effectively for consumers. In particular, we will continue during 2015/16 to play our full part in the Consumer Protection Partnership (CPP). The CPP brings together key players within the UK consumer landscape, and comprises the CMA, the National Trading Standards Board, COSLA (Trading Standards Scotland), the Department of Enterprise, Trade and Investment in Northern Ireland, the Trading Standards Institute, Citizens Advice, Citizens Advice Scotland, the Consumer Council for Northern Ireland and the Financial Conduct Authority. It uses intelligence from consumers, their representatives and others to identify and prioritise areas of significant consumer detriment where CPP partners working collaboratively can make a greater impact for consumers. The CPP intends to set out its future priorities in January 2015.
- 5.3 We will work with the National Trading Standards Board in England and Wales through the National Tasking Group, and with Trading Standards Scotland through the Consumer Protection Task Group, to ensure that cases are allocated appropriately between Trading Standards Services and the CMA. Using our existing knowledge and our markets experience, we will work with all partners to further develop capability, share intelligence and coordinate activity. We will work closely with the sector regulators and chair the Consumer Concurrencies Group, and will liaise closely with other enforcers of consumer law.

Concurrent Regulators

- 5.4 The CMA and concurrent regulators are determined to use the enhanced concurrency arrangements, which came into effect in April 2014, to make competition work better for consumers in these essential services. Our aim is to ensure that competition law is applied ever more effectively and consistently in regulated markets such as energy, communications and financial services.
- 5.5 The sector regulators (other than Monitor) are now subject to a statutory obligation to consider, before taking enforcement action under their direct regulatory powers, whether

enforcement under the UK or EU competition law prohibitions would be more appropriate. Under the new regime, the CMA and the sector regulators have greater accountability to Parliament and the public. The CMA is required to publish an annual concurrency report to assess the progress made as a result of the new arrangements. In addition, the CMA can take over cases from the regulators mid-stream and the regulators face the ultimate discipline of the Government removing a regulator's concurrent powers, for example, if they are not being used effectively. The new arrangements also include better information-sharing, provision for mutual secondments and the sharing of training and know-how.

- 5.6 Much positive progress has already been achieved and a number of institutional changes have been successfully implemented, which we will look to build on in 2015/16. The UK Competition Network, set up by the CMA and the UK's sector regulators, provides institutional form to enhanced cooperation. It focuses on both strategic issues in the enforcement of competition law, and on getting the mechanics of concurrency right and sharing know-how. The CMA and the sector regulators have entered into upgraded Memoranda of Understanding, copies of which can be found on the CMA's web pages.⁹ Within the CMA, a dedicated Sector Regulation and Concurrency Unit has been set up to oversee the concurrency arrangements.
- 5.7 The CMA and regulators have already cooperated well on a number of Competition Act cases, and some of the CMA's highest profile cases (the CMA's market investigation in the energy markets and its market studies in retail banking) have involved regulated sectors. The CMA's work on competition in the regulated sectors does not just focus on competition law cases, but also involves broader thinking and advocacy on opportunities to promote effective competition, for the benefit of consumers, in these sectors, working with the relevant regulators and other interested parties as appropriate.

The UK and Beyond

- 5.8 The CMA is a UK institution, with a remit that extends to Scotland, Wales and Northern Ireland. We recognise that devolution has led to different policy approaches and we have therefore established representatives in Edinburgh, Cardiff and Belfast. This gives us the capacity to ensure that as an organisation we are able to gather insight and understanding of the particular circumstances of these nations and also to promote and explain the work we do to stakeholders, partners and consumers more effectively across the UK. To support this, we are also committed to holding our CMA Board meetings in each of the three capitals over the period 2014–16. We will work with government to take

⁹ https://www.gov.uk/government/publications?departments%5B%5D=competition-and-markets-authority&publication_type=corporate-reports

forward any agreed proposals arising from the Smith Commission that relate to the CMA's responsibilities.

- 5.9 Internationally, the UK strives to be one of the world's leading competition regimes. With our primary duty to promote competition, both within and outside the United Kingdom for the benefit of consumers, we have a role to play in coordinating our actions with those of agencies in other countries and, where appropriate, helping other jurisdictions to develop robust systems. In a world of increasingly internationalised business, our effectiveness is linked to the effectiveness of other regimes in other jurisdictions.
- 5.10 We continue to work constructively with international bodies and partner agencies, in Europe and further afield, to support us in our mission. This includes our work with international consumer protection colleagues, for example through our presidency of ICPEN from July 2015 to June 2016, our membership of the European Commission e-Commerce Expert Group and the OECD, and also acting as the UK's Single Liaison Office under the EU Consumer Protection Co-operation Regulation.
- 5.11 International cooperation also forms an important part of the CMA's merger control work. As such, the CMA will continue to work internationally, including through contributions at the EU Merger Working Group and the International Competition Network's mergers work programme.

Advocacy and Evaluation

- 5.12 We will continue to use our expertise, knowledge and insight to advise others, including government, on how competition can work for the benefit of public service users and taxpayers. We will challenge policy frameworks that unnecessarily restrict or impede competition, and will work with colleagues in Government to help them to understand the benefits of doing so. Our advocacy work has three main areas of focus:
- (a) Proactive advocacy on substantive issues that we consider to be particularly significant
 - (b) Reactive advocacy, responding to Government requests for assistance in ensuring that competition considerations are properly factored in to policymaking
 - (c) Enhancing the capacity of other Government departments and relevant bodies to embed competition thinking into their policy.
- 5.13 Our advocacy for competition and the markets regime is underpinned by the work we do to better understand the effects of our interventions and to understand the impact that we can have on markets. In addition to the work we do to measure the direct benefits of our work regularly, we recognise that it also has significant, though hard to quantify, indirect benefits. Our approach to measurement of impact includes forward-looking impact estimation as we develop proposals for cases to pursue and evaluation after the event.

Our approach to evaluation, which draws on the best academic thinking and practical experience of competition and consumer interventions, has three strands:

- (a) Estimating the impact of each project as it completes
- (b) Evaluating projects to identify the costs and benefits, and lessons learned
- (c) Exploring further how best to assess the CMA's wider impact on economic growth including through deterrence or improving the prospects for exit, entry and innovation in markets.

Key Commitments and Initiatives

5.14 In addition to the work outlined above, in 2015/16 we will:

- Bring a clear, more consistent, consumer focus to work across our portfolio by engaging more widely and proactively with a diverse group of stakeholders on our projects, ensuring we maintain a consistent focus on consumers through the complete lifecycle of all our projects, and developing our use of digital technology to identify consumer detriment more effectively and to engage directly with consumers on our work
- Continue to develop and implement ways of working with our national consumer protection partners to help to ensure that the consumer protection regime operates as effectively as possible
- Deliver a successful Presidency of the International Consumer Protection and Enforcement Network (ICPEN), working with national and international partners to develop and deliver our consumer portfolio and continuing to play a leading role in the development of consumer protection internationally, particularly in Europe
- Encourage and facilitate, including through the UK Competition Network, a higher level of competition law enforcement activity by the sector regulators having concurrent powers, with the aim of the three-year average of Competition Act investigations in the period since April 2014 being materially greater than in the comparable period prior to April 2014
- Drive compliance with consumer law on unfair contract terms as revised by the Consumer Rights Bill by issuing new guidance and delivering an appropriate compliance strategy in collaboration with the CPP
- Publish two economic research projects, including one on the indirect benefits of competition policy to the economy and consumers, and two evaluations of the impact of completed work

- Provide thought leadership on competition policy with respect to vertical restraints, particularly in the online world, including through a published paper
- Based on our work, make recommendations to the Government on the impact of policy frameworks on competition in at least two sectors

6. Developing the CMA

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

Project management and delivery

- 6.2 We will further embed our common approach to managing projects across the CMA portfolio, ensuring it underpins our work and how we measure, track and demonstrate effective delivery. We will keep our approaches to running our projects under review to ensure our systems and working practices promote flexibility and collaborative working whilst maintaining an overarching focus on timely and robust decisions.

Matrix-based working

- 6.3 Our Project Management Office will continue to work collaboratively with senior staff to resource our projects in the most effective way. We will bring together different professions, experience and skill-sets to form multi-disciplinary teams that maximise the delivery of robust outcomes at pace. Integrating people in this way will further enhance the skills and experience of our staff and build greater organisational capability and resilience, as people benefit from opportunities to work with and learn from others.

Professional Development

- 6.4 Dedicated teams – a CMA Academy for skills specific to our work, a Know How team to share information and precedent, and an HR team to access the civil service learning framework for wider skills – will work together to continue to evolve our learning and development offer, based on business needs. This will provide colleagues with the opportunity to develop the core skills, knowledge, attitudes and behaviours they need to contribute to CMA business effectiveness, meet professional requirements and deliver projects in line with organisational specifications and performance management standards. Ensuring colleagues have the right skills will result in effectively run cases with high quality evidence and analysis and lower overall risk.

Professional groups

- 6.5 All CMA staff belong to a profession, and the Head of each profession is responsible for the professional development of those staff, including having input into decisions on which projects they work on and the roles they play. These arrangements are not confined to the five core professions (namely economists, lawyers, business and financial advisers, investigators and delivery) but will also apply to other professions including HR, communications, finance, policy and IT.
- 6.6 We will develop and embed a career development structure for the CMA. This will include career pathways, competency frameworks and links to development programmes for the five core professional communities, aiming to help staff achieve the highest standards appropriate to their profession. To complement this, we will also aim to identify 10% of staff deemed 'experts' within each of our core professional communities by October 2015.

Effective talent management

- 6.7 Ensuring we have the right people in the right role, with the right skills, at the right time is critical in enabling the CMA to meet its strategic objectives. We want to ensure that all of our staff have rewarding and interesting roles, that they have the skills and support they need to fulfil these roles and that they are able to reach their full potential and perform at their best more of the time. We will identify, grow and retain talent through a culture of learning and talent development that will support all staff, across all professions and grades, harnessing and nurturing the full range of talents of our staff to enable the CMA to meet current and future challenges.
- 6.8 We will identify and develop a programme for staff with high potential throughout the CMA and will take advantage of the tools and support provided across the Civil Service ensuring our programme is an exemplar across government and reflects best practice. We will work to ensure our staff are able to access the development they need to perform more effectively.
- 6.9 Our Talent Development Programme will ensure our people have greater control over their career development, and will have ongoing conversations about their development and career plans to enable them to reach their full potential. We will measure our success through the annual Civil Service People Survey, seeking improvements in positive responses around our staff's ability to build their careers at the CMA and access the right learning and development opportunities when they need to. Effective talent management will enable us to better attract, develop and retain our staff, enhancing the CMA's reputation externally as a great place to work.

Key Commitments and Initiatives

6.10 In 2015/16 we will:

- Embed our common approach to managing projects across our portfolio, ensuring that it underpins our work and how we measure, track and demonstrate effective delivery
- Develop and embed a career development structure for the CMA, including a career pathway, competency frameworks and professional development programmes for the five core competition professional communities, aiming to help staff achieve the highest standards appropriate to their profession. Develop and identify leading experts within each competition profession, aiming to have 10% designated experts by October 2015
- Develop needs-based programmes of professional development to ensure colleagues have the relevant skills needed to fulfil their roles effectively
- Continue to identify opportunities to improve the effectiveness of the organisation encompassing people, processes and policy initiatives, measuring the impact of these via colleague engagement surveys, staff turnover and project outcomes
- Increase the engagement of our staff by +3% points year-on-year in 2015, by taking action on feedback from our staff as a result of participation in the annual Civil Service People Survey. At the same time, achieving re-accreditation to Investors in People, evidencing our commitment and investment in the development of our people and fulfilling our ambition to make the CMA a great place to work
- Ensure that effective quality assurance arrangements underpin CMA evidential assessment and decision-taking across all its enforcement tools

7. Resources

- 7.1 The CMA's budget for 2015/16 comprises a Resource Departmental Expenditure Limit (Resource DEL) budget of £70.7m and a Capital budget of £1.1m. The Resource DEL includes a ring-fenced budget of £5.2m to cover depreciation and specific policy initiatives and places a limit of £18.9m (including £1.1m of depreciation) on administration expenditure. Personnel costs represent approximately three quarters of the CMA's non-ring-fenced budget. As Accounting Officer the CMA's Chief Executive is personally responsible for safeguarding the public funds for which he has charge, for ensuring propriety and regularity in the handling of public funds, and the day-to-day operations and management of the Authority.
- 7.2 We will provide more information on resource allocation in the final version of the Plan.

Annex A: CMA Performance Framework

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

The CMA will report annually on:

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

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

1. **Deliver effective enforcement**

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

- make strong and effective use of all its competition tools across a range of projects
- select and conclude an appropriate mix of cases, including economically complex 'effects' cases and multiparty cartel cases, to maximise impact, end abuse and create a credible deterrent effect across the economy
- seek to conclude more and swifter cases while maintaining fairness and without this being at the expense of lower financial penalties
- ensure its decisions are robust to achieve a greater number of successfully concluded cases and investigations compared to the historical record

- increase the proportion of successful defences against appeals of its infringement decisions

The CMA will report annually on:

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

2. Extend competition frontiers

The Government expects the CMA:

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

The CMA will report annually on:

- the number and nature of cases pursued under the markets regime
- the time taken to bring such cases to conclusion
- the outcome of cases

- its activities to promote competition in the regulated sectors and tackle anticompetitive practices, competition enforcement in regulated sectors and the operation of the concurrency regime
- its impact on government policy including the Government's response to recommendations made to it
- the longer-term impact of its interventions

3. Refocus consumer protection

The Government expects the CMA:

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

The CMA will report annually on:

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

4. Achieve professional excellence

The Government expects the CMA:

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

The CMA will report annually on:

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

5. Develop integrated performance

The Government expects the CMA:

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

The CMA will report annually on:

- its integration of its functions and development of its culture
- activities to improve its practices and procedures
- its collaboration with partner agencies at home and abroad

A6. Success with these five goals will increase the CMA's impact and make it:

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

The Government expects the CMA:

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

The CMA will report on:

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

The Government expects the CMA:

- to retain and develop the high quality people it needs

The CMA will report annually on:

- the results of its regular staff survey

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