



Department
for Business
Innovation & Skills

COMPETITION REGIME

Government's response to the
Consultation on the Strategic
Steer to the Competition and
Markets Authority

DECEMBER 2015

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1. Introduction

1. In line with this Government's focus on competition and productivity, over the Summer we have consulted on updating the non-binding Ministerial statement of strategic priorities to the Competition and Markets Authority (CMA), the Strategic Steer. The Steer to the CMA for this Parliament is to urge it to go further and fulfil its role of systematically challenging barriers to competition and taking effective enforcement against illegal activities that harm competition.
2. This Steer places more of an emphasis on productivity and removing obstacles that prevent new, innovative business models from entering the market place. The Government does not intend to direct the CMA to look at particular markets or sectors but requests that it remains as ambitious as ever when investigating markets – new and existing – to assess if there are barriers to competition.
3. The Government and stakeholders recognise that the independence of the CMA is vital to its success. The Government's Steer reflects and supports the CMA's independence. It focuses on high-level priorities and, importantly, provides a transparent statement of how the Government sees competition fitting with its wider objectives for the economy.
4. The Steer aligns fully with the CMA's formal accountability framework. It does not affect the scope of the CMA's powers or the legal tests it applies when making decisions. However, it does make clear that this Government wants the CMA, when undertaking its activities, to focus on three main elements: exploring markets where competition could be improved to promote greater consumer choice and encourage more innovation and productivity in sectors; safeguarding fair competition and enforcing anti-trust rules effectively; and removing unnecessary regulatory burdens on businesses wherever possible.

2. Consultation process

5. The Department for Business, Innovation & Skills published a consultation document entitled "Consultation on the Government's Strategic Steer to the Competition and Markets Authority" on 10 July 2015. The consultation closed on 7 August 2015. The consultation document is available online at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/446694/BIS-15-356-governments-strategic-steer-to-the-competition-and-markets-authority.pdf. It explained the Government's approach to issuing the Steer and invited comments.

3. Responses received

6. The Government received 18 formal responses to the consultation. A full list of respondents to the consultation can be found at Annex 2.
7. The table below provides a breakdown of written responses by type of responding organisation.

Type of Organisation	Responses
Business Representation Group	7
Large Business	5
Regulatory Body	2
Not-for-profit Organisation	1
Legal Representative	1
Consumer Body	1
Charity	1
Total	18

4. The Government's proposals

8. The Government is keen to increase transparency in the way in which it engages with the CMA and therefore committed that it would consult on, and publish, a high-level Ministerial statement of strategic priorities (the Steer) for the CMA to have regard to in each Parliament.
9. This Government Steer to the Competition and Markets Authority (CMA) replaces the current Steer. It focuses on promoting long-term healthy competition which will improve efficiency, productivity and outcomes for consumers. This is in line with the CMA's primary duty to "seek to promote competition, both within and outside the UK, for the benefit of consumers", and its aim "to make markets work well for consumers, businesses and the economy".

10. The Government consulted on this Parliament's Strategic Steer to the CMA and sought stakeholder views on the overall approach of the Steer and the length of time it should be in place for. The consultation also sought wider views on whether the Steer was focusing on the right areas in relation to competition.

5. Consultation responses

11. Respondents largely approved of a high-level Steer which gives long-term guidance on the Government's view of how the regime fits with the Government's wider priorities. Most respondents agreed that promoting strong and fair competition in markets would drive benefits to consumers through lower prices, better quality of services and choices available, and that vibrant competition generates long-term benefits to the economy. Most welcomed the certainty that the Steer provides and considered that it should remain in place for the length of the Parliament.

Competition and sector regulators:

12. A number of respondents commented on economic regulators and use of concurrency powers. The Government is keen to consider how concurrent regulators are using their competition powers and whether they could use them more to ensure that regulated markets function competitively. The Steer is clear that the CMA should build a strong dialogue with sector regulators to ensure that the overall competition regime is coordinated and regulatory practices complement each other. We see the CMA as well placed to provide a leadership role on competition with sector regulators and ensure that regulatory activities are coordinated.

Productivity

13. One response requested that the Steer make clear the link between competition and productivity. The CMA published a report in July on the relationship between competition and productivity: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/443448/Productivity_and_competition_report.pdf. There is evidence showing that competition can drive greater productivity. Studies suggest that countries with lower levels of product market regulation, enabling stronger competition, tend to have higher levels of productivity growth. There is also literature examining the impact on productivity of changes in competition over time, including as a result of deregulation.
14. The Government is keen that the CMA factors in levels of productivity when considering its market investigation work. The Steer has been amended to make this clear. The Steer is clear that the CMA should remain a strong defender of fair competition and enforce antitrust rules fairly and effectively.

New businesses vs. existing businesses

15. Some responses asked that the Steer be clearer on the balance between new and emerging businesses and markets. Stakeholders considered it important that there is a level playing field for all in all markets. The Government is clear that unnecessary barriers to market entry should be removed wherever possible.
16. New, innovative business models should not be prevented from entering markets either because of unnecessary regulatory requirements or because anti-competitive actions from incumbents are preventing new, innovative businesses competing. The Steer is clear that the CMA should explore all factors that might have an impact on competition across a range of sectors, whether considering old or new markets.

Local Authority interventions

17. Some responses raised concerns that interventions at a local level can cause problems for competition and asked that the CMA's power to make recommendations on Government interventions be extended to activities undertaken at a local level. We are keen that the CMA uses its ability to look at any intervention – at either the national or the local level – and, if it considers it might have an adverse impact on competition, feel free to offer advice and support to ensure the intervention does not have an adverse impact on competition.
18. We are clear that any interventions that have an impact on how a market functions must be considered from a competition perspective. We have amended the Steer to encourage the CMA to focus on the relationship between local authorities and competition. The Steer now ensures that the CMA should direct its attention and resources towards proposals – including those from local authorities – and flag concerns openly and promptly if it thinks that the proposal will have an adverse impact on competition.

Focus on consumers

19. Some respondents considered that the Steer was not adequately focused on consumers. However, the CMA's statutory duty is "to seek to promote competition for the benefit of consumers" and therefore the focus on consumers is clear. The Steer provides further information on where the Government thinks the CMA should focus its efforts in order to achieve its statutory aim. The CMA is also a member of the Consumer Protection Partnership, which seeks to coordinate collaborative work between consumer landscape partners within the UK to prioritise their activities to reduce consumer detriment collectively. We are keen that it continues to play a leading role in the work of the partnership and we support it in this aim.

Longevity of the Steer

20. Respondents agreed that the Steer should last the length of the Parliament in order to give certainty. We intend to keep the Steer in place for the length of the Parliament; but we will review the Steer mid-term to ensure it remain up-to-date with the Government's objectives.

Burden on business of the CMA's activities

21. Some respondents indicated that they would like the CMA to do more to reduce the burden on businesses of its regulatory activities and were keen that the CMA removes any unnecessary burdens on businesses. The Steer is clear that the CMA must consider its own practices and procedures for all its activities and, wherever possible, limit or remove any burdens it places on business.
22. The Government is heartened by the work the CMA is doing to tidy up remedies that are no longer necessary or required. We hope that it applies the same vigour to all its activities and streamlines them as much as possible.

Switching

23. Some respondents flagged up the importance of switching in helping markets function fully. Customers who actively and regularly look for the best deals are key to creating competitive and dynamic markets. Without these engaged customers, businesses may lack incentives to innovate and to grow. The Government is keen to do as much as it can to help encourage and incentivise switching so that consumers can get the best deal. In October we launched a Call for Evidence on Switching and are seeking views on how switching could be made easier to help businesses and consumers. The consultation can be found at <https://bisgovuk.citizenspace.com/ccp/switching-suppliers-making-it-easy-for-consumers>.

Specific markets

25. Some respondents were keen that the Strategic Steer identifies specific sectors and markets that the CMA should investigate. The aim of this Parliament's Strategic Steer is to provide the CMA with an outline of the Government's overall priorities in competition rather than identify particular markets. We are clear that the CMA should not feel restricted or limited in any way from looking at any market where it thinks competition could be improved.

6. The Government's decisions

26. The Government has considered the comments provided by respondents and decided to publish a revised version of the Steer as attached at Annex 1. The Steer is based on the principles as originally set out in the consultation document and which were widely supported by respondents (who emphasised the principle of the Government respecting the independence of the CMA).
27. The Government believes that since it has views on the development of the competition regime, it is better for it to be transparent and that the Steer is the appropriate vehicle for publicising these views. The Steer will remain in place throughout the Parliament but will be reviewed mid-term to ensure it remains up-to-date with the Government's objectives.

Annex A: Strategic Steer for the Competition and Markets Authority

“The most important single central fact about a free market is that no exchange takes place unless both parties benefit.” – Milton Friedman

Strong and fair competition in markets generates greater choice, lower prices, and better-quality goods and services for consumers, while also promoting growth and innovation on the supply side. Increasing productivity is central to our nation's long-term economic health, benefiting both consumers and businesses.

Throughout history, free and open markets have consistently shown themselves to be far more balanced and effective than anything government can deliver.

Government bureaucracies cannot compete with the impressive ability of open and fair markets to deliver benefits for customers. So during this Parliament we want to see strong competition and consumer empowerment employed as alternatives to regulation wherever possible, with the impact on competition factored in to the government policy-making process. The Competition and Markets Authority (CMA) has a vital role to play in making this happen and advising national and local governments if their activities are having an adverse impact on competition.

The speed and pace of technological change is phenomenal: new markets and services are opening up all the time and the rights of consumers need to be protected in all of them. We want the CMA to leave no stone unturned when considering all markets whether old or new, exploring all factors that may impact on competition across a range of sectors.

Understanding the evolution and nature of markets, as well as the impact of technology on consumer purchasing and business productivity, will help ensure that competition flourishes and consumers benefit.

Competition is also a key driver to innovation, applying pressure on businesses to constantly improve. New business entrants and new business models should be actively encouraged in all markets. The CMA has a pivotal role to play in ensuring that there are no barriers preventing businesses accessing or expanding in existing markets. On the flipside, there is a role for the CMA in identifying market structures that create barriers to exit for unproductive businesses. There should be a level playing field for all.

The fact that anti-competitive practices, like cartels and bid-rigging, can adversely affect productivity, for example by weakening competitive pressures on business, is a further reason that we are encouraging the CMA to robustly enforce anti-trust rules against such practices.

This Government's Steer to the CMA replaces the current Steer. It focuses on promoting long-term healthy competition that will improve efficiency, productivity and outcomes for consumers.

This chimes entirely with the CMA's primary duty to "seek to promote competition, both within and outside the UK, for the benefit of consumers", and its aim "to make markets work well for consumers, businesses and the economy".

We remain fully supportive of the CMA's status as a strong, independent competition authority. This Steer has been set with the CMA's legal duties and Performance Management Framework in mind.

The CMA will be expected to have regard to the new Steer during its activities but retains full independence in how it approaches its work, its selection of cases and the tools it uses to tackle them. A number of its functions are demand-led, such as merger control, market investigations referred by the sector regulators, and regulatory appeals. In carrying out all of its functions it will apply the appropriate legal tests, irrespective of the Steer.

The Steer

The Government considers that in meeting its primary duty the CMA should ensure that dynamic competition is allowed to flourish, thereby increasing productivity and sustaining economic growth for the benefit of consumers.

The CMA should energise its work **exploring markets where competition could deliver greater consumer choice and encourage more innovation and productivity in sectors**. The CMA should cast the net as wide as possible and feel empowered to study any market it considers to be in need of greater competition. The CMA should robustly tackle the constraints on competition in these markets using the most effective competition and/or consumer enforcement tools. In doing so it should continue to focus on:

- **increasing consumer confidence to drive competition in the marketplace and pressure businesses to innovate**. The CMA should consider consumer behaviour and actions when assessing whether a market is operating properly, looking at issues such as failure to compare products. Where it identifies concerns, the CMA should rapidly recommend solutions to help address the issues and promote strong competition;
- developments in **new emerging markets, such as online digital market places and use of data**. The CMA should develop expertise in the impact new emerging markets are having on competition, innovation and consumer choice. Key issues are likely to be the role consumer data is now playing in the market place and how to encourage effective competition in these new markets;
- removing barriers that prevent **new start-up businesses or new disruptive business models from accessing or expanding in existing markets**. Existing infrastructure ownership or unnecessary regulatory requirements may prevent new firms or business models from entering existing markets. The CMA should explore whether business activities, market structures or regulation can create barriers to new entrants. Where it identifies barriers to accessing markets it must recommend how these barriers could be reduced to help improve competition and consumer choice. The CMA should address any market structures that create barriers to exit for unproductive businesses, inhibiting effective competition;

- promoting the **importance of open and fair competition globally**. Fair access to open markets that allows UK businesses to compete on a level playing field internationally is crucial to growth. The CMA should play a leadership role in the EU and, more widely, ensuring that competition rules serve the interests of consumers rather than the bureaucracies that create them;
- **longer-term dynamic competition through innovation and the development of new business models**. The CMA should consider whether there are systemic barriers to sustainable competition that prevent long-term growth. In particular, it should consider potential competition and efficiency concerns in business-to-business markets and in the supply chain that might have an adverse impact on consumers;
- exploring innovative ways to **inject greater competition into markets for public services, where this has the power to improve delivery for consumers**. The CMA should use its knowledge to actively challenge central and local government and encourage the use of effective competition to improve delivery and to promote more diversity and choice for UK consumers. It should not be afraid to raise objections at the highest levels if Ministers or Civil Servants are failing to use competition effectively; and
- playing a leadership role with **regulators that have competition powers**, especially those that are new to the concurrency regime. The CMA should encourage those regulators to make greater use of their competition powers and to tackle anti-competitive actions in regulated markets.

The CMA should remain a strong defender of fair competition and **enforce anti-trust rules fairly and effectively** ensuring that its decisions are robust. The CMA should:

- **help businesses of all sizes and in all sectors to understand competition law and what they need to do to comply**. The CMA should work with trade associations and advice organisations to increase awareness and understanding of competition law and to promote best practice on compliance;
- **use a mix of powers, including the new provisions in the Enterprise and Regulatory Reform Act 2013**, to detect and punish cartels and other abuses, and deter anti-competitive actions; and
- **conclude enforcement cases as quickly as possible** ensuring that it has the maximum possible positive impact on the welfare of consumers. The CMA should consider additional measures to streamline processes and improve the pace of decision making.

The Government is committed to **removing unnecessary regulatory burdens on businesses wherever possible**. Using competition tools can often provide an alternative to regulation, and we encourage the CMA to act as a leader in this regard, particularly with sector regulators. The CMA can play a significant role in reducing burdens on businesses and securing better outcomes for consumers by:

- using its **powers to make recommendations on the impact on competition of legislative proposals and to challenge any rules and regulations** that may act as a barrier;

- **working with local authorities to help ensure that local interventions do not have a harmful impact on competition.** The CMA should assist local authorities – especially those that, over the course of the Parliament, receive further devolved powers – to understand competition law and challenge them to consider how competition can help to get better market outcomes in local areas.
- partnering with economic regulators to **use effective competition tools** to promote changes in markets rather than prescriptive licensing conditions and regulatory requirements;
- building a **strong dialogue with sectoral regulators** using the UK Competition Network to ensure that the overall competition regime is coordinated and regulatory practices complement each other; and
- examining its own practices to ensure that the **burdens it imposes on businesses when carrying out its activities are minimised.** The CMA should consider how to establish the user views on its processes and practices and, where possible, improve its activities as necessary to ensure they are as streamlined as possible.

Conclusion

The intention of this Steer is to support the CMA in achieving its objectives and ensure its interventions deliver tangible, positive benefits for UK consumers and the UK economy. The CMA's actions and interventions could have a significant impact on growth and innovation. It is important that the CMA both proactively enforces the law against anti-competitive actions and delivers benefits to UK consumers. We expect the CMA to advise Government on new ways of delivering services or intervening in the economy in ways not harmful to competition.

The CMA has a clear mandate to look at any Government rules and regulations – either at the national or local level - and advise on any implications they might have on competition. In order to drive innovation and improve productivity and choice, where appropriate this needs to apply to public services just as much as the private sector.

There will be a presumption that the Government will accept all of the CMA's published recommendations unless there are strong policy reasons not to do so. The Government commits to responding to the CMA's recommendations within 90 days, clearly indicating the steps that it will take in response to recommendations or the reasons that it is unable to take forward recommendations.

We welcome the CMA working with local authorities to help ensure that competition considerations are factored into all interventions. The Government would like the CMA to report on how well local authorities, including those cities with more devolved powers, are engaging with competition issues. The Government would welcome the CMA's findings in 2017.

Finally, the Government intends to promote productivity and remove unnecessary burdens on business and consumers wherever possible, and we expect that the CMA will make an important contribution toward this goal.

Annex B: List of Individuals/Organisations that responded

Association of Convenience Stores

BEEMA Ltd

CBI

Chartered Trading Standards Institute

Citizens Advice Scotland

Civil Aviation Authority

Experian Plc

Hausfeld & Co. LLP

Holidays Extra Limited

News Media Organisation

Non-Ferrous Alliance

Ofgem

Petrol Retailers Association

Rail Delivery Group

Scottish Power

Stagecoach Group

USwitch

Which?



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