

Competition and Markets Authority Annual Plan consultation 2017/18

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 partners and interested parties the opportunity to provide views and comments on the CMA's proposed Annual Plan for 2017/18, which sets out the organisation's main objectives and priorities for the year.

Duration

9 December 2016 to 15 January 2017

Enquiries

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How to respond

Respondents to this consultation are asked to supply a brief summary of the interest or organisation they represent, where appropriate. We ask that any suggested changes or comments on this document be submitted in writing by email or letter by 15 January 2017 at the latest.

After the consultation

We will collate responses to the consultation and publish a summary of these, along with a final version of the Annual Plan, in March 2017.

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:

Andrea Coscelli
Acting Chief Executive
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Foreword

In these uncertain times, the CMA's mission of making markets work well for consumers, businesses and the economy couldn't be more relevant.

As we consult on priorities for the CMA's fourth year we believe the strategic track we are following remains broadly right, and propose to build on our progress to date.

Competitive markets deliver better choice, innovation and prices for customers, and ensuring people get a fair deal when buying goods and services remains central to our work. We will continue to seek out areas of the economy where business practices, or the wider functioning of the market, mean this may not be the case, intervening as necessary to fix them.

We intend to further step up the pace, scale and impact of our enforcement against anticompetitive or unfair practices, and therefore propose to increase our targets for opening new cases. At the same time, we will not compromise hard-won improvements to the robustness of our work. That remains equally true of our work reviewing mergers and markets and conducting regulatory appeals.

The need to improve productivity right across the UK has again been highlighted by the Government. There are proven links between strong competition and increased productivity. By helping to create the conditions which allow innovative businesses that treat their customers well to emerge and succeed, the CMA can make a valuable contribution to sustained economic growth.

We remain committed to finding new ways to improve. We will learn from our experiences to date, and will focus on getting the most out the resources we have available – physical, financial and intellectual.

We do not yet know the nature of the UK's exit from the EU, or its implications for the competition and consumer protection regimes. The government will shortly publish a consultation on industrial strategy with a further consultation on consumer issues due in 2017, each of which may have a bearing on our work. We stand ready to further advise the government in the areas where we have expertise, and may need to alter the draft priorities we set out here in response to this evolving environment. In the meantime we will continue to focus on carrying out our duties under our existing legislative framework, to the highest possible standards.

I hope this draft Plan gives a clear impression of our priorities, and we look forward to receiving your feedback and suggestions.



David Currie
CMA Chairman

Highlights of our work this year

Now over half way through our third year, we have carried out a wide range of work to make a positive difference for consumers, businesses and the economy.

We are implementing important decisions in two of the biggest market investigations ever undertaken by a UK competition authority, into energy and retail banking. These investigations will lead to an enduring impact for households and businesses, ensuring a competitive deal for these essential services and protecting some of the hardest pressed in our society.

Meanwhile we are pushing ahead with market studies into sectors that have long been central our lives (legal services and care homes), alongside growing and evolving areas of the economy (digital comparison tools).

We have already stepped up our enforcement of competition and consumer protection law, penalising those who break the law and securing better protections for consumers. Since last November, we have opened 16 new Competition Act cases, compared with an average of 6.8 in the five years to March 2015.

Having imposed fines totalling £48 million earlier in 2016, largely in the pharmaceutical sector, in early December we fined Pfizer and Flynn Pharma a total of nearly £90 million for charging excessive and unfair prices to customers, including the NHS – and thus UK taxpayers – for phenytoin sodium capsules (an anti-epilepsy drug).

Online and digital markets remain a focus, especially in our consumer enforcement. We are investigating whether online gambling firms are treating their customers fairly and following our review of cloud storage, seven companies, including Google, Dropbox and BT, have committed to fairer terms and conditions for their customers.

We continue to find ways to further improve the efficiency of merger control. For example our increasingly targeted approach means that we now investigate only approximately 60-65 mergers per year versus the 100-120 annually under the previous regime.

These are but some of our achievements so far in 2016/17, which are part of a sustained journey of increasing impact, pace and scale across all of our work. As I hope you see from our draft priorities, this is a journey we are committed to continuing in the coming year.



Andrea Coscelli
Acting Chief Executive

1. Introduction

- 1.1 This document sets out in draft the Competition and Market Authority's (CMA's) plans and priorities for the 2017/18 financial year for consultation.
- 1.2 The CMA's Annual Plan sets out our approach to our work and how we propose to fulfil our responsibilities in 2017/18 and achieve an enduring positive impact in markets across the UK. It explains how we will continue to deliver our overall vision and mission, along with our five strategic goals, as set out in our published Vision, Values and Strategy.¹ These remain appropriate and unchanged, and continue to inform our choices and decisions.
- 1.3 After a thorough review, in our fourth year we do not propose significantly to alter our direction. We have built up a strong portfolio of cases which reflect our 2016/17 commitment to step up our enforcement. We will enter 2017/18 with a substantial volume of ongoing work and at the time of publication have 16 competition enforcement cases, five consumer enforcement cases, 16 merger investigations, two regulatory appeals and three market studies underway.
- 1.4 During 2017/18 we will see these through to successful conclusion and open new cases as resources become available. Our capacity to undertake new non-mandatory work is affected by this as well as by the volume of work we are required by statute to carry out.²
- 1.5 A major focus of the coming year is to ensure we are using the resources at our disposal as efficiently as possible to see those cases through, open new ones and make further progress in our primary duty to promote competition, both within and outside the UK, for the benefit of consumers.

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

² For example, a regulatory appeal or merger investigation.

Our priorities for 2017/18

- 1.6 As markets evolve rapidly, we will continue to prioritise work that has the greatest impact on ensuring a good deal for consumers – including the most vulnerable – and where we can support innovation and growth.
- 1.7 With finite resources, we take a strategic approach to determining which cases to pursue and which sectors or issues to prioritise. We do so using our Prioritisation Principles,³ balancing likely consumer benefit and strategic significance against risks and resources. We also take account of the activity, capacity and interests of our partners.
- 1.8 In this section we describe the sectors and behaviours which we are particularly interested in as we decide which work to carry out. Our choices are informed by our Strategic Assessment, published in November 2014,⁴ which remains a relevant analysis of the longer-term risks to UK consumers and markets. The Assessment highlights a number of thematic areas, all of which are significant for the CMA going into 2017/18:



Regulated sectors and infrastructure markets

- 1.9 Ensuring affordability and quality in regulated sectors is important for consumers, as these sectors provide essential services to virtually all households and businesses in the country. Intervening in and promoting competition within regulated sectors to make them work well for consumers and businesses therefore remains a priority for us in the coming year.
- 1.10 By April 2017 we will have implemented the remedies arising from our market investigations into the energy⁵ and retail banking⁶ markets, and we will continue working with the Financial Conduct Authority (FCA) and Ofgem to ensure our remedies deliver the intended benefits for consumers, businesses and the UK economy.
- 1.11 We will continue to prioritise cases which allow us to make an enduring difference in these regulated markets, which are of central importance to millions of families and businesses.

³ www.gov.uk/government/publications/cma-prioritisation-principles

⁴ www.gov.uk/government/publications/cma-strategic-assessment

⁵ www.gov.uk/cma-cases/energy-market-investigation

⁶ www.gov.uk/cma-cases/review-of-banking-for-small-and-medium-sized-businesses-smes-in-the-uk

- 1.12 Sector regulators and the Competition Appeal Tribunal can also refer work to us. We currently have two regulatory appeals in the telecommunications sector underway and the FCA is currently consulting on making a market investigation reference of the asset management market to the CMA.



Markets for public services

- 1.13 We propose to retain our focus on markets for the delivery of public services, having recently launched a new market study to explore the care homes market across the UK.⁷ We are also carrying out a number of competition enforcement investigations into anti-competitive practices in the pharmaceutical sector, including into suspected unfair pricing in the supply of certain pharmaceutical products to the NHS.
- 1.14 Our aim is to help ensure that users of public services get good outcomes, that they are protected when making important decisions at often vulnerable times, and that taxpayers get the improvements in value-for-money that competitive markets can offer. 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.



Sectors that are important to economic growth

- 1.15 There is a significant body of evidence⁸ on the links between competitive markets, innovation, productivity and economic growth.
- 1.16 To help address the UK's longstanding problem with low productivity, we intend to prioritise cases in markets which are important to economic growth, building on our work in markets of central significance to a well-functioning economy, such as legal services⁹ and passenger rail.¹⁰

⁷ www.gov.uk/cma-cases/care-homes-market-study

⁸ www.gov.uk/government/publications/productivity-and-competition-a-summary-of-the-evidence

⁹ www.gov.uk/cma-cases/legal-services-market-study

¹⁰ www.gov.uk/cma-cases/passenger-rail-services-competition-policy-project



Consumers' access to markets and barriers to decision-making

- 1.17 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. To drive effective competition, consumers need to be able and willing to access and assess information about the various offers available, and select the deal that gives them the best value and quality. Yet the risk of information overload, alongside practices such as drip pricing, misleading pricing and unfair contract terms, make it harder for consumers to find the right information and choose the best deal for them.
- 1.18 Equipping consumers with the right information and tools is a feature of our remedies in both the energy and retail banking market investigations, and underpins our market study into digital comparison tools.¹¹ In the coming year, we will continue to focus on areas where there is widespread or endemic practices that negatively impact on consumer decision-making or choice.



Online and digital markets Technology and emerging sectors

- 1.19 Online and digital transactions represent a large and growing part of the economy and also underpin most other economic activities, as well as raising important questions of competition law and policy. Meanwhile, 'challenger' businesses, innovative business models and new technologies have the potential to disrupt markets, both online and offline.
- 1.20 We will therefore continue to be active in the digital sphere and in emerging sectors. Alongside ongoing competition enforcement investigations, including into alleged online sales bans,¹² we launched our market study into digital comparison tools, our consumer enforcement investigations into online gambling¹³ and a campaign to ensure that online sellers know how to comply with UK competition law.¹⁴ We propose to build on the work we have carried

¹¹ www.gov.uk/government/news/cma-launches-study-into-digital-comparison-tools

¹² www.gov.uk/cma-cases/sports-equipment-sector-anti-competitive-practices

¹³ www.gov.uk/government/news/cma-launches-investigation-into-online-gambling

¹⁴ www.gov.uk/government/publications/price-fixing-guidance-for-online-sellers

out so far to achieve further sustained benefits for consumers and the economy.

- 1.21 Overall we intend to build on our track record of working in multi-billion-pound markets, choosing from our range of powers to protect consumers and make these areas of the economy work better. We are also, though, interested in pursuing cases in markets served by small and medium-sized enterprises (SMEs), which are vital to economic growth but where evidence¹⁵ suggests that there has been a lower level of awareness and understanding of competition and consumer law. SMEs can equally be the victims of anti-competitive practices and we want them to be informed enough to be able to alert us to these, as well as to avoid breaching the rules themselves.
- 1.22 During 2017/18 we will balance kicking off work in new areas with finishing what we have started. We are in markets to secure lasting change and will in general be inclined to see things through, before moving on. Through our evaluations programme and remedies reviews, we will also come back to markets where we have intervened in the past to ensure our work was effective, and if needs be we will revisit them.
- 1.23 Our future portfolio is necessarily characterised by a degree of uncertainty. It can take a lot of careful research to develop initial ideas into concrete proposals, and facts can emerge at any point which can change our views on whether pursuing an idea would be a good use of our resources.
- 1.24 There are a number of factors that are beyond our control, to a lesser or greater extent, which may affect our choices and what we carry out against our aims and intentions over the coming year. This can include fluctuations in the work which we are bound by law to undertake, such as merger control and regulatory appeals. It can also include the need to devote resources to defend our decisions in the courts.
- 1.25 Two further examples are the UK's exit from the EU and the government's evolving industrial strategy. At this time, there is only limited information about the approach the UK government is taking to each, but we will monitor developments closely, assess the implications for the competition and consumer regimes as a whole and respond and advise appropriately. In the meantime we will continue to carry out our responsibilities as the UK's primary independent competition and consumer authority, within our current legislative framework.

¹⁵ www.gov.uk/government/publications/uk-businesses-understanding-of-competition-law;
www.gov.uk/government/news/over-half-of-businesses-dont-know-unfair-contract-rules-well

1.26 In late 2015, the government published its new Strategic Steer to the CMA, which we have regard to but are not bound by.¹⁶ There is a close fit between the Steer and our own Strategic Assessment and plans. Ultimately, though, we are independent of government in our choice of work and our prioritisation of specific issues. All of our decisions are based on an assessment of how we can best work to the benefit of consumers, in line with our primary statutory duty, and this is our foremost consideration in the choices that we make as an organisation.

CMA tools and functions

1.27 We take an integrated approach across our work, selecting those tools through which we believe we will achieve maximum benefit for consumers and the UK economy.

1.28 The CMA's functions include the following:

- To investigate mergers that have the potential to lead to a substantial lessening of competition.
- To conduct studies and investigations into particular markets where there are suspected competition and consumer problems.
- To investigate individual businesses to determine whether they have breached UK or EU competition law and bring criminal proceedings against individuals who commit the cartel offence.
- To enforce a range of civil and criminal consumer protection legislation, tackling issues which suggest a systemic market problem or which affect consumers' ability to make choices.
- To work with sector regulators that have concurrent competition law powers to enforce competition law in the regulated sectors and to promote competition for the benefit of consumers in the regulated sectors (gas, electricity, water, post, aviation, rail, communications, financial and healthcare services).

¹⁶ www.gov.uk/government/consultations/competition-regime-competition-and-markets-authority-governments-strategic-priorities

- To conduct regulatory appeals and references in relation to price controls, terms of licences or other regulatory arrangements under sector-specific legislation.¹⁷

¹⁷ These include decisions of regulators such as Ofcom, Ofgem, Ofwat, Monitor, the FCA, the Payment Systems Regulator, Northern Ireland Authority for Utility Regulation, the Office of Rail and Road and the Civil Aviation Authority.

2. CMA vision

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

2.2 Underpinning our mission are five strategic goals:



Deliver effective enforcement

to deter wrongdoing, prevent consumers from losing out from anti-competitive mergers or practices, and ensure that businesses and individuals understand the law



Extend competition frontiers

by using the markets regime to improve the way competition works and by applying competition law and policy in the regulated sectors, alongside sector regulators



Refocus consumer protection

by working with our partners to promote compliance and understanding of the law, empowering consumers to make informed choices, leading policy development and pursuing precedent-setting cases



Achieve professional excellence

by managing every case efficiently, transparently and fairly, and ensuring all legal, economic and financial analysis is conducted to the highest international standards



Develop integrated performance

by bringing together staff from different professional backgrounds to form effective multi-disciplinary teams, complementing the work of other consumer, regulatory and enforcement authorities and acting as a trusted competition adviser across government

3. Enforcement

- 3.1 Effective enforcement of the law is central to the CMA's purpose. Our enforcement powers enable us to tackle conduct that breaches competition or consumer law, and to deter businesses and individuals from future infringements. The CMA is determined to protect consumers from illegal anti-competitive practices and from harmful unfair trading practices.
- 3.2 This matters for businesses as well as households – not only because businesses can themselves be the victims of anti-competitive conduct, but because effective enforcement of the law, protecting competition and fair trading, supports good business practice, innovation and increased business efficiency. That, in turn, enables markets to work better, to the overall benefit of our economy and our society.
- 3.3 We are willing to pursue big cases through which we have the potential to deliver significant benefit for consumers or the economy generally, and where necessary or appropriate to set important precedents for the future. We recognise the possibility of legal challenge such cases present and will robustly defend our decisions where it is right to do so. We welcome judicial oversight of our work and where we are not successful in appeals against our decisions we will learn lessons for future cases.

Competition enforcement

- 3.4 **In 2017/18 we propose to build on our progress in taking forward a higher volume of cases, doing so as efficiently and quickly as possible, without compromising fairness and rigour.**
- 3.5 Alongside retaining high procedural standards and analytical rigour, we are committed to increasing the speed and volume of our casework. We see this as essential to protecting consumers by ensuring that specific anti-competitive practices are ended as quickly as possible, and more generally that there is stronger deterrence against breaches of competition law.
- 3.6 In the past two years, we have exceeded our annual targets for opening new civil competition enforcement cases (under the prohibitions in the Competition Act 1998 and the EU equivalents) and are on track to do so again in 2016/17.
- 3.7 In this Annual Plan we propose to increase this target by 50%, to a minimum of six new civil competition enforcement investigations for the year.
- 3.8 We continue to seek a balanced portfolio of cases, including large cases that have wider impact and smaller, more local, cases that send the message that

no business is beyond the reach of competition enforcement. We aim to tackle anti-competitive practices across the UK, covering the nations and regions therein, and a variety of sectors.

- 3.9 As part of protecting consumers from anti-competitive practices, we remain mindful of our ‘competition disqualification’ powers under which individual directors of companies which infringe the competition prohibitions can be disqualified from UK directorships for a period of up to 15 years, either through a binding undertaking or, if this is not possible, by applying to the court for an order. These powers have been available to the UK competition authorities since 2003, but were used for the first time in early December 2016 when we secured a disqualification undertaking from the managing director of one of the parties to a price collusion cartel,¹⁸ for which we had issued an infringement decision in August; the undertaking disqualifies him from UK company directorships for five years, reflecting the fact that he had personally contributed to the breach of competition law. The CMA will continue to review the conduct of directors in other cases, and will seek disqualification where appropriate.
- 3.10 Our approach to the criminal cartel offence is guided by lessons learned from the galvanised steel tanks trial in 2015, where those defendants who were found ‘not guilty’ based their defence solely on the grounds that they had not acted ‘dishonestly’, and also on the fact that the law has now been changed so that, for conduct from April 2014 onwards, there is no longer a requirement for the CMA to prove that individuals acted dishonestly to establish the offence. We take a pragmatic view about launching criminal cases where the activity occurred before April 2014. Although they are, all other things being equal, more difficult to prosecute, we note that in the past two years, in two different cases, individuals have pleaded guilty in respect of pre-April 2014 activity. We are actively considering the launch of other cases involving cartel activity from April 2014 onwards, on the basis of ongoing intelligence work.

Consumer protection

- 3.11 **In 2017/18 we propose to prioritise projects where there are systemic market problems for consumers, where they 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.**
- 3.12 Our powers to protect consumers from unfair trading practices and unfair contract terms complement our powers to protect consumers from anti-

¹⁸ www.gov.uk/government/news/cma-secures-director-disqualification-for-competition-law-breach

competitive practices. As well as protecting people in their purchases, this role complements and reinforces our other work to support productivity and growth, by addressing problems where competition enforcement alone does not, or cannot, make a market work well for consumers.

- 3.13 As with our competition enforcement activity, this work is increasingly in online and digital commerce which raise challenging issues. But we also continue to ensure that consumers are protected in more traditional marketplaces, and that we are mindful that not all people can or do access markets using digital channels. In this Annual Plan we are increasing our target of public launches of consumer protection projects to a minimum of four for the year.
- 3.14 The National Audit Office is finalising its review of the consumer protection landscape in England and Wales. We will take note of any recommendations for the CMA and our liaison with partners in the consumer landscape.

Compliance and complaints

- 3.15 **In 2017/18 we propose to continue to use the outcomes of enforcement cases to ensure that relevant businesses and consumers are fully aware of the implications for their own behaviour.**
- 3.16 We know most businesses want to comply with the law, and so it is important to help them avoid illegal anti-competitive practices and unfair trading in the first place. Alongside stepping up enforcement we will continue to use innovative communications tools to raise awareness of the law, change behaviour, minimise the burden of complying (especially for smaller firms) and encourage complaints when firms see unfair practice by others.
- 3.17 We will target sectors where intelligence informs us that compliance may be poor, aiming to increase awareness of the law and generate complaints that we can follow up.
- 3.18 We will continue to make appropriate use of advisory and warning letters in the case of suspected breaches of competition law, encouraging compliance without the need for a full formal investigation, and reinforcing this by publicising the broad facts where appropriate.

Key commitments and initiatives

3.19 We propose that we will:

- launch as many new civil competition enforcement investigations as possible, where we have the requisite evidence, with six as a minimum (compared with a target of four in 2016/17);
- open new criminal investigations and pursue prosecutions as appropriate, having regard to lessons from our most recent cases as well as the change in the law in respect of cartel activity occurring from April 2014;
- continue to improve processes and challenge our ways of working to decrease the time taken to conclude competition enforcement investigations against a rolling three-year average benchmark;
- launch as many consumer cases or projects as possible where we have the requisite evidence, with four as a minimum (compared with a target of three in 2016/17);
- conclude our consumer enforcement cases or projects effectively either by agreement or by proceeding to litigation, with the majority to be concluded within 18 months of being publicly opened; and
- conduct further research into businesses' awareness and understanding of the law, to track progress and help target our compliance activity.

4. Markets and mergers

- 4.1 The markets regime allows us to look at specific markets or practices, through our markets projects,¹⁹ to consider how competition can make markets work better in the interests of customers (whether individuals, households or businesses) and the economy. We can, and do, intervene to protect customers where more competition alone is not enough.
- 4.2 Through our work on mergers we seek to ensure that the harmful effects of some mergers, which can include higher prices, lower quality or reduced innovation, are mitigated, prevented or remedied.
- 4.3 We can impose remedies in markets and merger cases to address the problems we find, and we ensure that these are appropriately tested, implemented, monitored and enforced.
- 4.4 We are responsible for deciding on appeals against the decisions of certain regulators, for example on regulatory price caps. This is an important part of our role as the decisions being challenged often concern significant sums of money and affect millions of consumers across the UK. The billions of pounds invested annually in the regulated sectors highlights the value of an efficient and stable regulatory regime.

Markets work

- 4.5 **In 2017/18 we propose to continue to look at specific markets or practices, and consider how competition can work better in these markets in the interests of customers – whether consumers or business customers.**
- 4.6 We published the final reports in two major market investigations into energy and retail banking in 2016/17 and are now focused on implementing our wide-ranging packages of remedies. We will also conclude our market study into legal services in England and Wales²⁰ before the end of this year.
- 4.7 In 2017/18 we will conclude the new market studies we launched into digital comparison tools²¹ and care homes.²² We will launch new market studies, calls for information or market investigations, focusing on areas in which we

¹⁹ Market projects include the statutory tools of market studies and market investigations.

²⁰ www.gov.uk/cma-cases/legal-services-market-study

²¹ www.gov.uk/government/news/cma-launches-study-into-digital-comparison-tools

²² www.gov.uk/cma-cases/care-homes-market-study

perceive there to be significant risks to consumers and the effective functioning of markets.

- 4.8 In line with our commitment in our Annual Plan 2016/17, we began a review of how we carry out market investigations. In 2017/18, we will conclude this work and take appropriate steps to improve how we undertake these complex projects as expertly and efficiently as possible.

Mergers work

- 4.9 **In 2017/18 we propose to build on the improvements we have made in the past two and a half years, to embed an efficient, effective and targeted merger control end-to-end process across both phase 1 and phase 2.**
- 4.10 These end to end initiatives included improvements to our pre-notification processes including updating the Merger Notice, use of initial enforcement orders and derogations, measures to ensure efficient Phase 1 investigation processes and to improve our use of Undertakings in Lieu.
- 4.11 In the coming year, we intend to continue to improve the process and procedure of our phase 2 investigations, to both support independent decision makers in taking effective and robust decisions and to ensure efficiency and proportionate use of resources.
- 4.12 We further intend to develop the skills, knowledge and capacity of our panel members and staff working on the mergers portfolio.
- 4.13 The voluntary nature of the UK merger regime is valued by business as it ensures that mergers which raise no competition concerns are not unduly held up by regulatory scrutiny, and thus helps to minimise burdens on business. 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.

Remedies implementation, monitoring, enforcement and review

- 4.14 **In 2017/18 we propose to make further progress in our systematic review of existing remedies, and ensure that new remedies which we design and implement are proportionate, timely and reflect a clear understanding of consumer behaviour.**
- 4.15 In 2015/16 we commenced a programme of work to systematically review our existing remedies, with the aim of removing measures that are no longer

appropriate or may now be restricting or distorting competition. Removing such remedies not only lightens the administrative burden on affected businesses but also enables the CMA to focus our monitoring and enforcement activities on those remedies of greatest value to consumers and markets.

- 4.16 At the time of publication, we have removed or recommended the removal of 69 remedies, 75% of those we have reviewed to date. We propose to continue with this work, launching further reviews either on our own initiative or in response to submissions from affected parties.
- 4.17 The CMA is subject to statutory timescales for the implementation of remedies – we are proposing to maintain our commitment to meet these timescales without the need for an extension in at least 70% of phase 2 merger and market cases.
- 4.18 In 2016/17, we launched a joint programme of work with sector regulators through the UK Competition Network (UKCN) to develop a better understanding of consumer behaviour to inform proposed demand-side remedies. We will conclude this work in the coming year and will publish the lessons learnt.

Regulatory appeals

- 4.19 **In 2017/18 we propose that we will continue to carry out our duties for references concerning, and appeals against, the decisions of certain regulators.**
- 4.20 Although it is not possible to predict which (if any) decisions of which regulators will be referred or appealed to the CMA, we will ensure that we have the necessary skills among our staff and panel members to resource these cases appropriately.

Key commitments and initiatives

4.21 We propose that we will:

- launch two to four new markets projects in the course of the year;
- conclude the review of how we carry out market investigations and take appropriate steps to improve how we undertake these projects in the future, including consulting on the strategic role of market investigations and revised markets guidance;
- seek to clear at least 70% of phase 1 merger cases that are less complex (and therefore do not require an issues meeting and case review meeting) within 35 working days;
- seek to complete 70% of phase 2 merger cases without an extension to the statutory deadline, measured as a three-year average of all relevant merger cases;
- continue our ongoing review of older remedies and launch three to four further reviews of existing merger or market remedies in the course of the year;
- seek to implement phase 2 merger and market investigation remedies without the need for an extension to the statutory deadline in at least 70% of cases, as measured as a three-year average of all relevant merger and markets cases; and
- conclude our joint programme of work with the UKCN to develop a better understanding of consumer behaviour, and publish our findings.

5. Partnership and advocacy

- 5.1 **In 2017/18 we intend to build ever closer relationships with partners, to ensure that the competition and consumer regimes can achieve the maximum possible benefit with minimal duplication or burden on business.**
- 5.2 Achieving our strategic goals depends heavily on effective working with our range of partners and making the best possible case for competition, including to those whose principal focus is on other policy objectives.

Consumer and business engagement

- 5.3 We have worked hard to build a strong understanding of consumer and business issues across the entire range of our work, and remain committed to maintaining and developing this understanding in the future. This includes continuing to engage directly with consumers and consumer representative bodies, as well as businesses of all sizes, their representative bodies and trades associations to raise awareness of both the CMA, and of competition and consumer law. Such engagement with consumers and businesses also helps us to gather intelligence on potentially unfair and anti-competitive behaviour and to understand the challenges faced across the economy and society and throughout the UK, which in turn helps to inform where we should focus our work.

Consumer partners

- 5.4 We will continue to play an active role in the Consumer Protection Partnership (CPP), which brings together key players in the consumer landscape. In all our work with the CPP we will aim to bring a market focus to its collective assessment of the important issues facing consumers to ensure that the Partnership's activities have the widest possible impact.
- 5.5 We will continue to work with the National Tasking Group, part of the National Trading Standards Board, and with Trading Standards Scotland, to ensure that the highest priority consumer cases are allocated appropriately between the CMA and Trading Standards Services (TSS). We will support the work of TSS, for example in the area of unfair contract terms where the CMA holds the policy lead, and will continue to work closely with individual TSS on specific cases.
- 5.6 We will continue to develop our relationships with other important consumer partners throughout the UK, outside of the CPP groups including through the

Consumer Concurrency Group, which is chaired by the CMA, and by strengthening our bilateral relationships with others such as the Advertising Standards Authority, the Information Commissioner's Office and Which?.

Concurrent regulators

- 5.7 We work closely with concurrent regulators, under the enhanced concurrency arrangements that came into effect in April 2014, to help ensure that competition law is applied effectively and consistently in markets for essential services such as energy, rail, water and financial services.
- 5.8 In 2017/18 we intend to build on the progress we have made to date, by continuing to work with the regulators to promote competitive markets through appropriate use of competition law enforcement powers and broader markets work. This is in addition to supporting other policy work designed to promote competition and broader thinking and advocacy on opportunities to make these markets work well for consumers.

The UK and beyond

- 5.9 The CMA is a UK institution, with a remit that extends across England, Northern Ireland, Scotland and Wales. While most of our staff are located in our London office, we have representatives in Scotland, Wales and Northern Ireland. As well continuing to build on relationships with partners in the nations, we will continue to engage with partners in different English regions, including those gaining devolved powers, to help us better understand the challenges facing local economies.
- 5.10 Having held board meetings in Belfast, Edinburgh and Cardiff in the preceding two years, we intend to hold a CMA board meeting in Belfast and in an English region in 2017.
- 5.11 Internationally, the UK strives to be one of the world's leading competition and consumer regimes. With our primary duty to promote competition, both within and outside the UK for the benefit of consumers, we coordinate our actions with those of agencies in other countries and, where appropriate, help other jurisdictions to develop robust systems.
- 5.12 The UK's exit from the EU could have a significant bearing upon our work. Its implications for the competition (including enforcement, mergers and markets) and consumer protection regimes, and the CMA, will depend upon the outcome of the exit negotiations and the terms of the future relationship with the EU. We are helping the government to understand how EU exit could affect these regimes as well as identifying key priorities going forward. We

may need to alter the draft priorities we set out here in response to this evolving environment. As well as working with the government, we will continue to collaborate with our European and international partners to ensure that consumers are protected, and to influence wider law and policy development.

Advocacy and evaluation

- 5.13 We will continue to use our expertise, knowledge and insight to advise others, including the UK government and the devolved administrations, on how competition can work for the benefit of consumers, businesses and the UK economy. We intend to challenge current and proposed policies that unnecessarily restrict or impede competition, and will work with colleagues across government to help them to understand the benefits of doing so.
- 5.14 Our programme of advocacy work will evolve throughout the year. We intend to continue to advise government departments in areas where they, or we, have concerns as to the impact of proposed government policies on competition. This will be particularly so in areas where we have ourselves carried out work recently, as we have in 2016/17 with the regulation of higher education and the use of public sector information.
- 5.15 We will follow up on themes highlighted in *A better deal*,²³ including the impact local government has on markets. In this area, we propose to continue to provide advice on the regulation of local bus services, on taxi and private hire markets, and on detecting and deterring bid rigging in public procurement; this latter issue at both national and local level. Our market study on care homes may also lead to further work with local authorities on how they can best discharge their responsibilities for shaping adult social care markets.
- 5.16 As requested in the Strategic Steer, we will report in 2017 on how well local authorities are engaging with competition issues. We will report on our advocacy projects in our annual report and accounts.
- 5.17 We will continue with our programme of economic research aimed at improving how we implement competition policy. We expect to complete two such research projects during 2017/18. We will also continue to draw on the best academic thinking and practical experience of competition and consumer interventions to evaluate our work, including:
- (a) estimating the impact of each project as it completes;

²³ www.gov.uk/government/news/cma-welcomes-competition-plan

- (b) evaluating projects to identify the costs and benefits, and lessons learned; and
- (c) exploring further how best to assess the CMA's wider impact on economic growth including through deterrence or improving the prospects for entry, exit and innovation in markets.

Key commitments and initiatives

5.18 We propose that we will:

- continue to play a leading role in the development of competition and consumer protection internationally;
- within the UK, continue to play an active role in the CPP and continue to work closely with consumer enforcement, regulatory and advisory bodies in the wider consumer landscape;
- launch one or two new evaluations of major market investigation remedies;
- publish two economic research reports, and
- 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 2017/18 we propose that we will continue to identify opportunities to improve the effectiveness of the organisation, promoting a culture of continuous improvement, diversity and professional excellence.**
- 6.2 We will develop an overarching Corporate Services Strategy, which outlines the vision for Corporate Services over the Spending Review 2015 period, and a plan to achieve that vision, including specific actions that we consider necessary to support cultural change.
- 6.3 We believe in the importance of leadership skills and how these are critical to the achievement of CMA's strategic objectives and will focus on various activities to improve our staff survey results on leadership and managing change to be aligned with Civil Service High Performers.
- 6.4 With the introduction of the Enterprise Act 2016, the CMA has a target to offer apprenticeship starts equivalent to 2.3% of headcount per year: in 2017/18 that equates to approximately 14 starts. This is an opportunity to build our organisational capability and develop new staff skills, as well as supporting the government's social mobility agenda and improving the diversity of our people. We are committed to investing in apprenticeships, and our intention is to initially offer opportunities for our existing staff to develop new skills and career progression while we develop a longer-term strategy.
- 6.5 We aim to help staff achieve their aspirations, potential and the highest standards of performance. We intend to continue to embed career and professional development for CMA staff through the use of our Career and Professional Development Hub and through leadership from Heads of Profession.
- 6.6 We are committed to promoting equality of opportunity and diversity throughout our organisation. Having a reputation for taking diversity seriously, where all our staff are supported and developed, work in a positive, supportive environment and are able to reach their full potential whatever their background, will enable us to attract and retain the best staff in a highly competitive market for talented people. In the coming year, we intend making further progress with our five-year Single Equality Scheme Action Plan, and move from being not only a compliant organisation to one that also actively promotes and celebrates diversity.
- 6.7 We intend to bring together our systems and services to better enable the CMA to increase the pace and quality of its work, through business applications that are better aligned and integrated. We also plan to embed

Cloud services across the CMA's applications, to align with the UK government's ICT and Digital Strategy. Our investment in infrastructure and support services will continue, to allow us to realise efficiencies in back-office functions which will in turn achieve more efficient and better quality services to the front line.

- 6.8 We plan to further embed and refine our common approach to managing projects across the CMA portfolio, reflecting on the experience of the CMA to date. This includes exploring how to achieve the outcomes we need with leaner project teams and lower resource costs while ensuring that we retain legal and economic rigour. Our systems and working practices will continue to promote flexibility and collaborative working while maintaining an overarching focus on timely and robust decisions.

Key commitments and initiatives

6.9 We propose that we will:

- increase the engagement score in the annual Civil Service People Survey to become one of the Civil Service High Performers, by taking corporate and local action on feedback from our staff to the survey, fulfilling our ambition to make the CMA a great place to work;
- comply with the general Public Sector Equality Duty and make further progress towards the objectives set out in our Single Equality Scheme Action Plan. We will give a progress report on how the CMA is demonstrating its achievement of these against its published objectives and our desire to create a diverse and inclusive environment and culture;
- offer new apprenticeship starts equivalent to 2.3% of headcount; and
- during the year, meet the government target of paying 80% of undisputed invoices within five working days of receiving them.

7. Resources

- 7.1 The 2015 Spending Review settlement allocated the CMA's budget for 2017/18 as a Resource Departmental Expenditure Limit (Resource DEL) budget before depreciation of £65.94 million and a Capital budget of £1.3 million. This is a flat Resource DEL settlement, over the remaining Spending Review period, representing an estimated reduction over the four years of 7% in real terms.
- 7.2 The Resource DEL settlement places a limit of £17.75 million on administration expenditure (before depreciation). Personnel costs represent approximately three-quarters of the CMA's budget.
- 7.3 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 CMA.

8. Consultation questions

8.1 We hope that this draft Annual Plan gives you a clear impression of our plans and priorities for next year as they currently stand, and we look forward to receiving your feedback and suggestions:

- Do you agree with the overall direction and areas of focus for the CMA set out in the 2017/18 draft Annual Plan?
- Is there anything more you think we should do during 2017/18?
- Is there anything you think we should de-prioritise during 2017/18?

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