

The Rt Hon. the Lord Adonis  
House of Lords  
London  
SW1A 0PW

From: Andrea Coscelli  
*Chief Executive*

31 July 2017

Dear Lord Adonis

**Anti-competitive behaviour in the market for higher education in England**

Thank you for your letter of 10 July 2017 in which you present evidence that successive Governments' ambitions for the UK Higher Education ("HE") sector are not being realised and ask the CMA to open an investigation into alleged collusion in the sector. I appreciate you taking the time to set out your views in detail.

In your letter, you highlight two outcomes in the HE sector that are not good for students, that suggest that the market for undergraduate higher education might not be working well in their interests, and that might be consistent with collusion between institutions. First, the majority of institutions charge the maximum fee permissible for most of their undergraduate courses, and the majority of institutions have raised their fees to the new maximum each time the cap is raised. Second, a significant proportion of students disagree that their courses offer value for money. I recognise that these are areas of considerable public concern, and the CMA, and its predecessor the OFT, have considered them carefully in our work in the sector.

Having reflected on these points, I am afraid that the CMA is not currently minded to open an investigation of the kind you propose. The CMA has not seen any direct evidence of price collusion. If you have any such evidence, we would of course be interested to see it. But subject to that, in the absence of our having seen direct evidence, our assessment is that there are more plausible explanations for the outcomes you identify.

First, UK markets for HE do not appear to be concentrated. We have previously found that prospective students consider universities across the country (of which there are well over a hundred). This suggests that the relevant markets are likely to be national, so institutions have numerous competitors, and it would be very difficult for participants to enforce an agreement not to compete, even in an environment where market participants meet regularly.

Second, in the parts of the HE sector where there is not a price cap (i.e. postgraduate courses) there is a wide dispersal of fees charged by institutions. There is no obvious reason why undergraduate courses should be more susceptible to collusion than postgraduate courses; the most significant difference between the two, and therefore the most likely explanation of the different outcomes, would appear to be the application (or not) of a price cap. In the absence of a price cap, it is therefore likely that at least some prices would rise.

Third, there is evidence of institutions competing vigorously to attract students and faculty members. Institutions spend significant (and increasing) amounts of money on marketing their courses, and there has recently been significant new entry into the sector.

The OFT's call for information report<sup>1</sup> noted several reasons why it might be expected that most institutions would raise their fees to the maximum permitted. Your letter noted that the income resulting from the increase in fees in 2012 outweighed the reduction in public grant. Even if this is the case, this is a market where there is both a price cap which provides a focal point for pricing, and unsatisfied demand. The OFT noted that in 2013 35,000 applicants did not receive an offer. It appears that collusion may not be necessary for institutions to raise their fees without suffering a significant loss of demand.

Moreover, it is difficult for prospective students to assess the quality of Higher Education courses in advance. In such cases, students and those advising them may use price as a signal of quality. Institutions therefore have an incentive to set prices at the level of the cap to provide that signal and little incentive to reduce prices as that may not result in increased demand. And fee increases may not result in a significant loss of demand for places at a given institution.

The evidence that the CMA has seen on the causes of the outcomes of concern to you suggests that they may result, at least in part, from the nature of regulation in the sector. This is why the CMA has used its resources to ensure compliance with consumer law and to engage with government to promote competition in the sector. Both of these strands of work have the objective of protecting the interests of

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<sup>1</sup> [OFT1529](#)

students, including by ensuring that competition in the sector works to their advantage.

The CMA's consumer enforcement work has consisted in the production of guidance on institutions' responsibility under consumer law<sup>2</sup>, including the requirements on them in terms of the information they must provide to prospective students, a review of compliance with consumer law in the sector<sup>3</sup>, and enforcement action against certain institutions that may have breached consumer law.<sup>4</sup>

Our advocacy work has engaged with government to help it understand how better regulation can drive better market outcomes for students. In its report into the regulation of the sector<sup>5</sup>, the CMA made recommendations designed to tackle problems it identified in the structure of regulation, including that:

- Regulatory sanctions vary according to institutional type.
- Where an institution does not have its own degree awarding powers, its degree courses can be 'validated' by an institution that does.
- The existing fee cap is based on number of academic years, rather than course credits; and
- There are gaps in the information available to students about variables relevant to their choice of institution and course.

Most of the CMA's recommendations on these issues have been adopted by the government in, or alongside, the passing of the Higher Education and Research Act 2017. We will continue to advise the government and the Office for Students on how it might further encourage the development of effective competition in the sector in the interests of students.

As the substance of your concerns is in the public domain and of wider interest, unless you have any objection I propose to publish this reply on our website.

I would be very happy to meet to discuss if that would be useful.

Yours sincerely

Andrea Coscelli  
*Chief Executive*

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<sup>2</sup> [higher-education-consumer-law-advice-for-providers-and-students](#)

<sup>3</sup> [compliance-review-findings-higher-education-undergraduate-sector.pdf](#)

<sup>4</sup> [consumer-protection-review-of-higher-education](#)

<sup>5</sup> [Policy\\_paper\\_on\\_higher\\_education.pdf](#)