

Law Society of Scotland Response – 2 May 2017

4. Questions for consideration

4.1 Do you agree with the proposed changes to MIs set out under proposal (A) (streamlining the MI process)? If not please explain why and whether there are any alternative changes that would achieve the stated aims set out in paragraphs 1.10 and 1.11?

Generally agree.

4.2 Do you agree with the proposed changes set out under proposal (B) (strengthening synergies between market studies and market investigations, and clarifying the relationship between the Board and the Group in relation to the scope of MIs)? If not please explain why and whether there are any alternative changes that would achieve the stated aims set out in paragraphs 1.10 and 1.11?

Generally agree.

4.3 What do you consider to be the potential benefits arising from the changes? Are there any possible risks arising from the proposals, and how could these be mitigated?

See below at 4.5. We welcome that the CMA recognises that there is a need for a more comprehensive review of its guidance on market studies and market investigations and that this is effectively the first stage in a broader longer-term process of consolidation and development of the CMA's markets guidance based on its continuing experience in these fields.

4.4 Is the updated text of the guidance sufficiently clear and does it adequately reflect the proposed changes? If there are particular aspects of the amended text where you feel greater clarity is necessary, please be specific about the aspects concerned and the changes you would propose to improve them.

Generally agree.

4.5 Do you have any other comments about the proposed changes and the resulting amendments to the guidance?

The new guidance is to be welcomed. In practice, however, the benefits of flexibility and truncation, intended to deliver efficiencies and effectiveness in CMA work, need to be balanced and assessed against any unintentional adverse impacts in the context of an investigation. One of the practical problems to consider is the challenge of conflict or prejudice in exercising discretion in process and procedure. To manage that risk, appropriate checks and balances in process and procedure should be subject to regular review by the CMA and published as part of its annual review and plan. The CMA must remain focussed on that risk and potential outcomes - any unintended consequences from implementation of the revised arrangements. The challenge, for example, that timelines and strict deadlines presented to companies have not always been mirrored by the timelines or deadlines set or met by the CMA and its predecessors. Inevitably this impacts on the resource, time and costs of the parties to the investigation. Good corporate governance in

preparation, determination and recording of decisions is also a critical factor in the current environment and forms part of any investigation or response process.