05.11.18

CMA WORKING PAPER ON UPDATED MARKET OUTCOMES ANALYSIS

RESPONSE FROM AON

1. Aon responds to the CMA's working paper on market outcomes: updated results (the "WP") in three parts:
    a. This covering paper.
    b. A report prepared by RBB Economics ("RBB") on the implications of the changes to the CMA's approaches to measuring market outcomes which were set out in the WP.
    c. A confidential annex to RBB's paper. This discusses certain 'disclosed material' that was released to Aon's advisors as part of a confidentiality ring exercise. Aon has not reviewed this annex.
2. Upon review of the further CMA analysis, our view is unchanged: there is a lack of persuasive evidence of adverse market outcomes in relation to trustee engagement. The CMA has not met the necessary evidential threshold to demonstrate an adverse effect on competition ("AEC") with respect to either the IC or the FM markets.
3. In support of this view we refer the CMA to our previous submissions in response to (i) the WP on trustee engagement; (ii) the WP on gains from engagement; and (iii) the Provisional Decision Report (the "PDR"). In this paper we do not repeat those submissions, but limit our commentary to explaining the reasons why the evidence presented in the WP fails to strengthen (and in fact weakens) the case for finding an AEC.

The WP fails to address Aon's previous submissions that the CMA's evidence does not support its IC-FM steering assertion

4. As we have previously submitted, the gains from engagement analysis presented in the PDR undermines the CMA's arguments with respect to alleged IC to FM steering.[1] As we emphasised during our remedies hearing, this analysis shows that when moving from IC to FM with the same provider, trustees are in fact either better off (or at least not worse off) than if they switched to another provider. This is because 'disengaged' trustees who stay with the same provider do not pay more than those who switch to another provider.[2] This casts considerable doubt on the view that steering could be a feature of the market that gives rise to an AEC. On the contrary, the evidence points to many customers recognising that having taken the decision to move from IC to FM, there is a benefit for them in retaining the same advisor.
5. The CMA does not address this criticism in any way in the WP. In fact, as now presented, the WP *supports* the findings that schemes are not steered against their interest, but stay with the same provider when entering FM because they are better off (or at least not worse off) from choosing this path.

[1] Aon's response to the PDR, paragraph 3.3.2, and Aon hearing with the CMA of September 27th 2018.
[2] WP, column (4) of Table 2.

The CMA presents no credible rationale for narrowing the definition of 'engagement'

6. The WP demonstrates that based on the definition of 'engagement' adopted by the PDR (which includes (i) appointments of professional trustees; (ii) appointments of TPEs; or (iii) running of tenders) there are no gains from engagement. This means that low levels of 'engagement' when moving into FM cannot be a feature of the market that gives rise to an AEC.

7. Given that the CMA has been unable to find evidence to support its theory of harm under its prior definition, it appears that the CMA has now opted to narrow the scope of 'engagement' to refer only to the running of tenders. No explanation is offered for this beyond a simplistic description of the change at footnote 2 to the WP.

8. Absent an explanation, the only rationale that can be inferred for this narrowing of definition is that the CMA hopes to be better able to evidence its theory of harm. Yet such an approach takes the CMA even further away from the complete and holistic analysis of the market that it is reasonable to expect the CMA to have undertaken.

9. We submitted in our response to the first WP on gains from engagement that there are many circumstances where engaged trustees might not trigger one of the then-measures of engagement that the CMA adopted.[3] The CMA has not only ignored this key feature of the market, but is now ignoring analysis of two further actions by schemes which it previously considered properly measurable. There will be many occasions where trustees have appointed one or both of these experts to help them to choose the right path for their schemes and their members, which will have *not* resulted in a tender. The result is that the CMA's analysis is artificially narrowed and is thus flawed.

The WP presents only inconclusive evidence of gains from tendering

10. Having narrowed its focus, the CMA claims to have demonstrated gains from tendering. However, this is not shown by the WP. As RBB explains in the attached paper, the CMA's results are not robust. The WP is selective in the control variables it includes and the analysis it presents.

Gains from tendering do not evidence an AEC

11. In any event, even if there were material gains for schemes that tender prior to entering FM, this does not comprise a feature that could give rise to an AEC. As we have submitted previously, and as discussed at some length in Aon's remedies hearing, trustee engagement must be assessed in a holistic way. In these circumstances, any suggestion that the FM market is not 'well-functioning' because too few customers tender is not credible.

12. We are extremely concerned that by narrowing its evidence base in this way, in order to find a behaviour that can ostensibly be 'fixed' with a binary solution of tendering, the CMA risks denying choice to customers who recognise the benefit of retaining their existing advisor when they move from IC to FM. The CMA will also miss a valuable opportunity to help other trustees to improve their engagement in the broader sense.

[3] Aon's response to the WP on gains from engagement, paras 2.2 – 2.4.