

CMA Annual Plan 2019/20 consultation

Summary of responses

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1. Overall

- 1.1 We received 16 responses to our consultation, from individuals and organisations that between them represent significant numbers of citizens, consumers and businesses across the United Kingdom.
- 1.2 The formal feedback received during consultation, alongside informal feedback received from a range of other stakeholders, has shown support for the priorities and commitments set out in the Competition and Markets Authority's (CMA) 2018/19 draft Annual Plan (the Plan).
- 1.3 This document summarises responses according to the themes on which we consulted and wider points unrelated to a specific theme.

2. Wider responses

- 2.1 Several respondents suggested specific pieces of work for the CMA to carry out. We thank respondents for these suggestions and will evaluate against our Prioritisation Principles¹ as part of our pipeline of prospective work.
- 2.2 Respondents reinforced the need for the CMA to pursue a balanced portfolio of cases, including in major markets which serve millions of people, as well as pursuing cases in smaller markets across the UK and those served by small and medium-sized enterprises (SMEs); they also supported our compliance and awareness-raising activities for SMEs.
- 2.3 There was support for our commitment to secure lasting change in markets, and to come back to markets in which we have intervened in the past to ensure that our work was effective.
- 2.4 One respondent recommended that the CMA should take account of the implications of mergers and takeovers on workers, and that there should be permanent Trade Union representation within the CMA to ensure that the interests of workers are considered at every level of decision-making on our cases.
- 2.5 A concern was raised about whether the CMA considers the impact on consumers in rural or isolated communities and whether markets work effectively there.

¹ www.gov.uk/government/publications/cma-prioritisation-principles

- 2.6 Respondents welcomed our growing presence across the devolved nations but sought clarity on how the CMA's work sits alongside the competition and consumer protection work of the Scottish Government.
- 2.7 One respondent recommended a full review of the CMA to ensure fitness for current purpose and to ensure we can overcome the challenges that lie ahead.

The CMA's view

- 2.8 We welcome support for a balanced portfolio of cases, including large cases that have a wider impact and smaller, more local cases that send the message that no business is beyond the reach of our enforcement. We also remain committed to helping businesses to comply with the law and we will continue to reinforce our casework with targeted messages to relevant sectors.
- 2.9 We welcome support for our commitment to secure lasting positive change in markets. We will continue to follow through on our recommendations and remedies, examining the effectiveness of our previous interventions and revisiting them if needed.
- 2.10 When investigating a merger, the CMA is required by law to assess the potential impact of that merger on competition and consumers. Assessing other potential effects of a merger falls outside the statutory powers granted to us by Parliament, except where there is a relevant ground for a public interest intervention by the Secretary of State. As such, considering the impact of any merger on the workforce is not within our remit. With this in mind, we do not think it appropriate for there to be trade union representation in our decision-making structures for cases.
- 2.11 It may be the case that competition is less intense in rural or isolated communities, where there are fewer businesses offering a particular good or service. The Office of Fair Trading carried out a review of price and choice in remote communities.² We will continue to have regard to this study when similar issues arise, taking action where necessary. We are expanding our presence in the devolved nations and have established a network of regional champions. These developments will allow us to get closer to and better

²

[https://webarchive.nationalarchives.gov.uk/20140402155712/http://www.offt.gov.uk/OFTwork/consultations/remot
e-communities/#named1](https://webarchive.nationalarchives.gov.uk/20140402155712/http://www.offt.gov.uk/OFTwork/consultations/remot
e-communities/#named1)

understand local issues, so that we can help ensure that markets across the UK, whether in urban or rural communities, work in consumers' favour.

- 2.12 The CMA responded to the Scottish Government's 2018 consultation on the development of a new consumer agency, Consumer Scotland. Our response focussed on how the new agency will form part of the wider consumer landscape in the UK, proposing that it should be a member of the Consumer Protection Partnership, alongside the CMA and others. We await the outcome of the consultation.
- 2.13 In March, the Department for Business, Energy and Industrial Strategy will publish the statutory five-year review of aspects of the competition regime. The Furman Review into competition in digital markets is also expected to publish its findings in March. Alongside these reviews, and at the request of the Secretary of State for Business, Energy & Industrial Strategy, we have been considering what legislative and institutional reforms may be needed to safeguard the interests of consumers and to maintain and improve public confidence in markets. In the coming year, it will be important to bring the outcomes of these reviews together, and to take whatever steps are necessary to enable the CMA to respond quickly to challenges from rapidly changing markets, and bolster public confidence in the competition regime.

3. Protecting vulnerable consumers and improving trust in markets

- 3.1 Respondents welcomed the CMA's plan to continue to focus on protecting vulnerable consumers and improving wider trust in markets.
- 3.2 Some respondents noted the multidimensional nature of consumer vulnerability and therefore the complexity in addressing the harm that consumers face.
- 3.3 There was interest in how the CMA would define and identify vulnerable consumers, and how we would weight our potential decisions and actions to protect them.
- 3.4 One respondent called upon the CMA to carry out a comprehensive review of vulnerability across key sectors such as energy, telecommunications, water, retail and financial services.
- 3.5 A consumer representative organisation highlighted risks posed by new entrants to markets, and that, in such cases, the correct consumer protection and enforcement procedures are needed to ensure that people are protected.

The CMA's view

- 3.6 We welcome respondents' support for our continued focus on this area.
- 3.7 As noted in our draft Plan, consumer vulnerability is multidimensional and often highly context-specific. In 2018/19, we have carried out a broad programme of research and engagement with partners, including groups that represent vulnerable consumers, to learn more about how people's circumstances can affect their ability to engage in markets and get a fair deal.
- 3.8 We will publish a paper in the coming weeks that sets out our thinking on consumer vulnerability in more detail, as well as how the CMA can further consider vulnerable consumers' issues in its work.
- 3.9 As one of our Annual Plan commitments, the CMA will place extra weight on potential casework where it relates to harm suffered by people in a vulnerable situation. We will factor this into the 'strategic significance' test, one of our four prioritisation principles.
- 3.10 We also identified the harm suffered by vulnerable consumers in our response to Citizens Advice's super-complaint,³ finding that some businesses use a range of tactics that make it even more difficult for customers to engage and then take advantage of unsuspecting, often vulnerable, customers who do not regularly switch to a better deal and/or to another provider. We recommended a robust package of reforms to tackle these practices and protect the people being hardest hit.
- 3.11 As we take forward our recommendations with government and regulators, we will maintain a focus on protecting vulnerable consumers, and in improving wider trust in markets. One of our recommendations, which is directed at the CMA and sector regulators is to 'consider targeted pricing regulations, alongside other measures where there is clear harm, particularly to protect vulnerable consumers'. Whilst regulators have in the past been reticent to introduce price caps because these can distort markets to consumers' overall detriment, in our view there may be situations where the case for targeted intervention is stronger.
- 3.12 More widely, we recommended that the CMA and regulators should make bolder use of existing enforcement and regulatory powers to tackle harmful business practices that may be damaging to vulnerable consumers.
- 3.13 We support any efforts to ensure that consumers across the UK are protected through correct consumer protection frameworks and enforcement

³ www.gov.uk/government/news/cma-tackles-loyalty-penalty-charges

procedures, including from new business models and entrants. The UK government has confirmed⁴ it plans to introduce civil fining powers for breaches of consumer protection law – a recommendation we strongly support.

4. Promoting competition in online markets

- 4.1 Respondents welcomed the CMA's plans to continue to focus on the practices of companies operating online, tackling practices or the wider functioning of markets that cause or increase the risk of harm.
- 4.2 Consumer representative organisations raised concerns about barriers to internet access, and that vulnerable or digitally-excluded consumers can get left behind.
- 4.3 One respondent raised a concern that the CMA does not appear to be considering the impact on competition of the interaction between online and traditional markets.
- 4.4 Respondents raised concerns about the risk of consumer harm arising from personalised pricing and wider price discrimination enabled by online trading, looking to the CMA to work alongside regulators to ensure a coordinated response to protect consumers from these negative effects.
- 4.5 Respondents noted the CMA's consideration of further work into digital advertising, offering support for us carrying out any work in this area.

The CMA's view

- 4.6 We welcome respondents' support for our continued focus on this area.
- 4.7 We agree with the view that our work in the digital economy should take into account those who are unable to easily access or navigate the online world. As part of our focus on vulnerable consumers, we will continue to take into account people who struggle to access to the best deals online.
- 4.8 We believe that there should be a level playing field for all businesses, whether online or 'bricks and mortar'; market conditions should allow new entrants and innovative ideas to emerge and gain hold, but at the same time, disruptors should not benefit from a playing field that is tilted unfairly in their favour through the exploitation of loopholes so they are competing on factors

⁴ <https://assets.publishing.service.gov.uk/media/5a3bbeace5274a7356de0f5e/beis-response-to-cma-on-dcts.pdf>

other than those that ultimately benefit consumers. Some of the issues raised, such as taxation or employment law, are more directly under the oversight of other parts of government, but we will continue to encourage other Departments to fully consider the effects of their policies on competition and consumers.

- 4.9 We recognise the risk of consumer harm arising from personalised pricing and wider price discrimination enabled by online trading. We have recently published research⁵ on pricing algorithms and whether they could be used to support illegal practices. This research showed that there was little evidence of companies currently using algorithms to show personalised prices, they were sometimes used to change the order in which products are shown to shoppers.
- 4.10 Our research will help us to better understand, spot and deter the use of algorithms to damage competition and harm consumers. We now have a specialised team who will help us to further increase our understanding of how firms use data and algorithms, and to determine what implications this might have for consumers. We will continue to work closely with our regulatory partners, including through the UK Competition Network, to ensure a coordinated approach.
- 4.11 We welcome respondents' support for our consideration of further work into digital advertising, although our ability to launch any new discretionary work is dependent on the UK agreeing an EU Exit deal with a transition period.

5. Supporting economic growth and productivity

- 5.1 Respondents welcomed the CMA's intention to continue to focus on supporting economic growth and productivity.
- 5.2 One suggested the CMA should examine whether regulators in their current form can adequately police and support the functioning of markets, and in particular regulators' performance against their growth duty. The respondent suggested that a review could lead to an even stronger role for CMA in making sure competition in the relevant sector works, including exploring the viability of legislating for an 'enhanced' duty to economic growth for regulators.

⁵ www.gov.uk/government/news/algorithm-research-builds-on-work-in-digital-markets

The CMA's view

- 5.3 We welcome respondents' support for our continued focus in this area.
- 5.4 The CMA and the sector regulators have concurrent powers to apply competition law in the regulated sectors. We play a leadership role in overseeing the operation of these concurrency arrangements and work with the regulators to promote competition in their sectors. Our remit does not extend to the regulators' growth duty. It would be a matter for government to review whether regulators can adequately police and support the functioning of markets, and their performance against their growth duty.

6. Preparing for the UK's exit from the EU

- 6.1 Respondents recognised the importance of preparing effectively for the UK's exit from the EU (Exit), and the challenges presented by the uncertainty around the timing and nature of Exit.
- 6.2 Two respondents argued that Exit preparations should not crowd out, or reduce the quality of, equally important work to which the CMA is committed, especially in relation to consumer protection law enforcement.
- 6.3 Welcoming the information the CMA published⁶ on its role in the event of leaving the EU without a deal, one respondent highlighted the need for further clarity and precision, including further detail on the scope of different regulators and the rules that businesses need to follow; another asked about our plans for and progress in readiness preparations, specifically around recruiting the required additional staff to take on new responsibilities post-Exit.
- 6.4 Two respondents highlighted the importance of the CMA strengthening its international profile and increasing participation in international fora. One respondent thought it important that the CMA remains a part of the European Competition Network (ECN) if possible, even as an affiliate or observer, to maintain relationships, coordination and intelligence sharing. The other highlighted the importance of continued international cooperation on consumer enforcement investigations as close as possible to the current arrangements under the Consumer Protection Cooperation (CPC) Network.

⁶ www.gov.uk/government/publications/cmas-role-if-theres-no-brexite-deal

- 6.5 One respondent highlighted the challenge for the CMA in carrying out a new State aid enforcement function post-Exit, where that enforcement may bring it into conflict with wider political aims.
- 6.6 Another respondent recommended that in carrying out its State aid enforcement responsibilities, the CMA should capitalise on the local knowledge of people in devolved nations.

The CMA's view

- 6.7 We welcome respondents' recognition of the importance of preparing effectively for Exit and the challenges for the CMA in doing so. Whilst this has been a high priority for us, we have also pursued an ambitious programme of work under our current remit.
- 6.8 The government has allocated us up to £20 million to allow us to continue our preparations for the UK existing the EU. We are well advanced in our recruitment of the staff necessary to take on the State aid function and a greater number of merger and competition enforcement cases following Exit and expect to have the majority of posts filled by 29 March; we have plans in place to fill others on a short-term basis if necessary.
- 6.9 We are confident that by late 2019 we will have brought in all the extra people we require, and we will continue to review our resources required to carry out our additional responsibilities. However, it is a simple fact that our ability to carry out discretionary work, such as market studies and further enforcement, will significantly narrow in the short term if the UK leaves the EU without a deal in March 2019.
- 6.10 We have published detailed guidance⁷ for consultation on our role after Exit; we will publish final guidance before 29 March.
- 6.11 International cooperation is crucial to the successful delivery of our competition and consumer work. We intend to make full use of our existing close relationships with international agencies to work together, seeking and sharing information to the extent permissible, and developing new ways of working to protect UK consumers from harm. We will also seek to maintain and to build on the strong, mutually beneficial and cooperative relationships that we have built with our overseas counterparts, including the OECD and other international fora; we agree that continued attendance at ECN would also be valuable. Although the CMA may, however, no longer be a member of

⁷ www.gov.uk/government/consultations/effects-of-a-no-deal-eu-exit-on-the-functions-of-the-cma

the ECN, we would expect to maintain strong and effective relationships with European competition authorities through new bilateral or multilateral arrangements with the European Commission and EU Member States.

- 6.12 The CMA is by design independent from Ministerial departments and is set up to operate fairly and impartially across the whole of the UK. Safeguarding this independence is fundamental to ensuring the State aid regime will be effective and achieve its aim.
- 6.13 The CMA has existing relationships with policy makers and stakeholders in the devolved administrations which ensure we are kept aware of the institutional, political and socio-economic context of our work in the nations, particularly around markets. We are strengthening our capabilities across the UK, expanding our office in Edinburgh and planning modest increases in the other devolved nations. We have also identified the potential for State aid recruitment across all the CMA's UK offices, further underlining our continuing commitment to consumers and businesses across the UK.

7. Resources

- 7.1 There were no comments received on this section.

Appendix A: List of formal respondents

Mr Ambrish Parmar

Association of Mortgage Intermediaries

British Chambers of Commerce

Citizens Advice

Citizens Advice Scotland

Cognizant Consulting

Federation of Small Businesses, Scotland

Mr Graham Sharp

Law Society of Scotland

National Energy Action Northern Ireland

Scottish Care

Scottish Enterprise

Scottish Legal Complaints Commission

Scottish Trading Standards Services

Union of Shop, distributive and Allied Workers

Which?