BARCLAYS

Reforming Competition and Consumer Policy: Driving Growth and Delivering Competitive Markets that Work for Consumers

Barclays Response Summary

Barclays welcome the opportunity to respond to this Government consultation.

We have focused the majority of our comments on the Competition Policy section of the consultation, and have offered additional thoughts for the remaining two chapters (Consumer Rights and Consumer Law Enforcement). We would welcome the opportunity to discuss our comments in further detail with BEIS.

Competition Policy

Barclays supports competitive markets and agrees that there are aspects of the UK's current competition policy framework and enforcement regime that need refinement or updating. However, before making the changes proposed in the consultation, Barclays would urge the Government to examine more carefully and consult in detail with businesses on the significant timing, cost and resource impacts of competition investigations and interventions, particularly those in which businesses are contacted by the CMA as an interested third party, where there is no allegation of wrongdoing by an individual business or in relation to mergers which bear no nexus to the UK. This is so the Government can properly assess (i) the potential further impact on those businesses of the changes proposed; and (ii) any consequent impact on competition and consumers. We would urge Government to consider carefully if a number of the proposals may substantially increase the regulatory burden on and uncertainty for companies, without clear benefits, thereby undermining the attractiveness of the UK to businesses, rather than achieving the stated ambition to make "*the UK the best place in the world to start and grow a business*".

We also note the desire of both the Government and the CMA for the UK to have a world-class competition regime, and we would welcome consideration of how far some of the proposals would take the UK out of kilter with other jurisdictions.

In summary, our main points on the competition section are:

- It is not clear what the precise problems are that BEIS is trying to fix, where the gap in enforcement is or what it envisages the role of the CMA to be in the future. Further consideration needs to be given to these points before progressing the proposals, as some of these would lead to significant uncertainty and unfairness for business, with no discernible benefits for consumers. The UK regime is considered a leading competition regime in part due to its impartiality and in-built checks and balances that ensure decision-making is subject to the principles of proportionality, accountability and transparency. We urge BEIS to exercise caution before adopting proposals which may result in an erosion of these safeguards.[1]

- Market studies and investigations, as well as the remedies that flow from them, already create very significant costs and pressures for business, and do so in circumstances where there is

[1] We would also call on the Government to ensure the same principles and safeguards from potential over-intervention apply to the powers proposed for the Digital Markets Unit (**DMU**), as part of the Department for Digital, Culture, Media & Sport (**DCMS**) consultation on "*A new pro-competition regime for digital markets*".

no allegation of illegality or inappropriate conduct. The proposals, including on remedies and interim measures, would further exacerbate this position and risk adverse consequences and uncertainty for both businesses and consumers.

- The proposed new enforcement powers would represent a significant change, particularly in relation to market investigations. We do not think that sufficient evidence has been presented as to why these new powers are needed or the manner in which they are justified.

- In respect of mergers, the CMA already exercises a wide discretion through the share of supply test, including to review vertical mergers, and therefore it is not clear what the new threshold seeks to achieve. The proposal instead risks increasing legal uncertainty, making the UK less attractive for investment and significantly increasing the resources and costs required of UK companies to notify or put in briefing papers for deals with no nexus to the UK. We support the proposal to provide leniency applicants immunity from private damages and would urge continued, careful consideration, including engagement with international authorities, on making this effective. However, we have concerns about the impact of the remainder of the proposals in relation to Competition Act Investigations on companies' rights of defence and the importance of ensuring that there remain appropriate checks and balances on the authorities' exercise of these powers. Also, we do not believe there is sufficient evidence to justify a number of the proposals.

Consumer Rights

Barclays is supportive of ensuring that consumers are equipped to make informed decisions about products and services and that communications are made in a clear manner. We would note that the definition of a subscription contract proposed in the paper "*a contract between a consumer and trader over a period of time for the supply of goods or a service*" could be read to include the ongoing provision of many financial services.

We do not believe that any new subscription requirements stemming from this consultation should apply to products and services regulated by the FCA and PRA. Financial products and services are already subject to a significant degree of regulation and oversight to ensure appropriate and fair treatment of customers, with financial services providers subject to ongoing supervision from the FCA as the sector regulator. In addition, the FCA is in the process of consulting on a new outcomes-based regulatory framework, the "Consumer Duty", which is expected to have far-reaching implications for the financial services sector, including enhanced communications requirements.[2]

Therefore, we would encourage policymakers to consider and avoid overlaying the forthcoming regulatory standards within the regulated financial services sector.

Consumer Law Enforcement

We have provided views on elements of the Consumer Law Enforcement section that are relevant to Financial Services.

Barclays considers that the CMA should be subject to the established principles of Judicial Review (JR) in relation to consumer law cases. However, we would suggest that the CMA should seek a form of

[2] Communications is one of the four key outcomes under the proposed Consumer Duty.

oversight or scrutiny for decisions that affect firms which is less adversarial than JR and that allow for a range of solutions. This process should be able to review not only the legality of the decision made, but also the substance of the decision.

On the issue of Alternative Dispute Resolution (ADR) services, we recognise the challenge that can exist when trying to balance timely customer redress with full investigation of complaints. We would note that occasionally, an ADR service can take a decision that has subsequent policy or precedent implications. These decisions should face a higher level of external engagement from relevant stakeholders, such as the sector regulator, firms in the sector and consumer bodies. To this end, we would recommend that a twin-track decision making process be created so that cases with wider policy implications can be processed in a different manner, and be subject to a higher degree of analysis and consideration of applicable law and regulation by appropriate experts. This proposal would also allow the ADR services to focus on dealing with routine individual cases and alleviate the higher levels of pressure that ADR services face.