

CMA impact assessment 2021/22

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CMA144



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1. Summary

- 1.1 The Competition and Markets Authority (CMA) is the UK's lead competition and consumer authority and its primary duty is to promote competition, both within and outside the UK, for the benefit of consumers. The CMA has a wide range of tools to use in addressing competition and consumer problems including carrying out investigations into mergers and markets, enforcing competition and consumer law, and working with sector regulators. The CMA also has a function to consider regulatory references and appeals.
- 1.2 As part of the framework agreement between the CMA and the Department for Business, Energy & Industrial Strategy,¹ the CMA is required to report annually on:
- (a) the delivery of a target of expected direct financial benefits to consumers of at least ten times its relevant costs to the taxpayer (measured over a rolling three-year period); and
 - (b) the ratio of direct financial benefits to consumers and costs for its principal tools.²
- 1.3 In this eighth CMA Impact Assessment, we report on the performance against this target for the financial year 2021/22. As the target is measured as a three-year rolling average, for 2021/22 the calculation is based on the performance of the past three financial years.
- 1.4 For the period 2019/20 to 2021/22, the estimated direct financial benefit to consumers was £6,792.3 million in aggregate, representing annual average consumer savings of £2,264.1 million. The average ratio of direct benefits to cost over the last three years was 22.5 to 1. The largest projects contributing to this year's estimates were the Facebook / Giphy merger inquiry³ and the Children's social care study.⁴

¹ BEIS (August 2021), [Framework Agreement Between: The Competition And Markets Authority and The Department for Business, Energy and Industrial Strategy](#).

² Ibid, paragraph 9.2.

³ [Facebook, Inc \(now Meta Platforms, Inc\) / Giphy, Inc merger inquiry](#).

⁴ [Children's social care study](#)

Table 1: Estimated average annual CMA consumer savings and costs for 2019/20-2021/22

	<i>£m</i>
<i>Area of CMA work</i>	<i>Direct benefits</i>
Competition enforcement	118.7
Consumer protection enforcement	146.5
Merger control*	676.6
Market studies and market investigations	1322.3
<hr/>	
Total benefits	2264.1
Costs	100.7†
Benefit/costs	22.5:1

*The CMA has a duty to investigate mergers that legally qualify for scrutiny. This means that CMA merger control work is demand-led and not discretionary, unlike most other areas of the CMA's work. Given that the number of qualifying mergers can vary considerably from year-to-year (because of fluctuations in the economic cycle for example), the number of investigated mergers and the direct consumer benefits of the CMA's merger control work can also vary significantly from year-to-year.

†This is total CMA costs (actual spend) minus the costs of the CMA work on regulatory appeals.

1.5 The assessment is undertaken by the CMA itself and is reviewed by an external expert. This year the expert was Dr Peter Ormosi of the University of East Anglia.⁵ The methodology used by the CMA is based on that developed and used by the Office of Fair Trading (OFT) and the Competition Commission (CC),⁶ validated by successive independent academic reviewers and consistent with approaches now regarded by the OECD as international good practice.⁷

1.6 Impact assessments for cases are conducted immediately after they have finished. They are based only on information available during the case and on assumptions regarding the expected impact of our interventions and, as such, are considered to be 'ex ante' evaluations.⁸ For example, for market studies and investigations the impact estimates capture the expected future benefits of remedies, rather than an ex post assessment of their effectiveness in practice. In general, the assumptions we apply are cautious and, hence, we consider our estimates to be conservative. In order to gain further understanding of the impact of the CMA's work, we also conduct ex post evaluations for a small subset of cases that help us to critically assess the

⁵ Dr Peter Ormosi is a Professor of Competition Economics at the University of East Anglia.

⁶ OFT (July 2010), [Guide to the OFT's impact estimation methods](#).

⁷ OECD (April 2014), [Guide for assessing the impact of competition authorities' activities](#).

⁸ In rare circumstances we have used ex post information to improve our impact assessments.

effects of past interventions, drawing lessons and implications to inform future decision making at the CMA.⁹

- 1.7 Our estimates exclude the impact of a number of cases where the CMA's intervention is likely to generate considerable consumer benefits, but these benefits were difficult to quantify in a sufficiently robust manner. The estimate of benefits excludes the CMA's compliance work,¹⁰ international activities,¹¹ and regulatory appeals.¹² In the latter case this is because the CMA's role is an appellate one rather than being the primary regulator.¹³ The benefits from our advocacy to government are also excluded.¹⁴
- 1.8 In addition, the focus on direct financial benefits means that we exclude many important wider impacts of the competition regime. For example, we do not take into account the deterrence effect of our work, such as the deterrence of anti-competitive mergers or of anti-competitive conduct. Evidence from existing academic studies,¹⁵ previous OFT research,¹⁶ and an ex post evaluation conducted in 2018,¹⁷ indicate that such deterrence can be significant albeit very difficult to measure precisely. The impact of this deterrence is likely to be particularly strong in the areas of competition and consumer protection enforcement.
- 1.9 Studies also show that increases in competition in a market are often associated with increases in productivity, and that competition policy interventions can, therefore, improve productivity.¹⁸ This impact on productivity is not captured in our impact assessment. In sum, evidence suggests that the direct impact of interventions is only a part of the overall positive impact of the CMA's work.

⁹ See examples in paragraph 2.12.

¹⁰ For example, engaging with small and medium enterprises, their trade associations and intermediary advisors in England and the Devolved Nations.

¹¹ For example, engaging with international networks and organisations.

¹² For example, the 2020/21 appeal of the [Ofwat PR19 Price Determinations](#).

¹³ The CMA's duty in this area is to act according to the relevant legal framework rather than necessarily acting in the immediate interest of consumers.

¹⁴ This includes advice, support and recommendations to government to help promote competition and consumer interests in the policymaking process.

¹⁵ As collated in the CMA's 2017 literature review, [The deterrence effect of competition authorities' work – literature review](#).

¹⁶ See [The impact of competition interventions on compliance and deterrence, OFT1391](#) and [The deterrent effect of competition enforcement, OFT 962](#).

¹⁷ DotEcon (2018), [Evaluation of direct impact and deterrent effect of CA98 cases](#).

¹⁸ CMA (2015), [Productivity and competition: a summary of the evidence](#).

2. Overview of our methodology

- 2.1 The impact estimates included within this report focus on the direct financial benefits to consumers of the CMA's work completed over the past three financial years. We average the benefits over three years to reduce yearly fluctuations in the impact estimates due to uneven caseload¹⁹ and to reflect the fact that some of our cases take more than one year to complete. The direct financial benefits to consumers may include, for example, the direct reduction in prices to consumers or the value to consumers of improvements in quality, service, or information provision following an intervention.
- 2.2 We present estimates of the impact of our work for each of the following areas:
- (a) Competition law enforcement
 - (b) Consumer protection enforcement
 - (c) Merger control
 - (d) Market studies and market investigation references (collectively referred to as 'markets work' in this document)
- 2.3 For merger control and markets work, the CMA is both the phase 1 and phase 2 authority in a two-stage process (phase 1 cases being referred to phase 2 where there are sufficient competition concerns to require further, more in depth, investigation). Although the decision makers at phase 2 comprise a group of independent members drawn from the CMA panel (to ensure a transparent and distinct process), the CMA has responsibility for both phases including their resourcing. Where cases have been referred to phase 2, benefit estimates are only made once the phase 2 process has been completed, although both phase 1 and phase 2 costs are part of the impact assessment.
- 2.4 For confidentiality reasons, we do not publish impact estimations for individual cases and projects. However, our estimates have been independently reviewed by Dr Peter Ormosi to ensure that our benefit estimates are reasonable and robust.²⁰

¹⁹ Although some areas of the CMA's work are proactive, such as market studies and investigations, other areas depend on factors outside of the CMA's control. For further discussion of this issue see paragraph 3.16.

²⁰ Consistent with the purposes of the review exercise, we asked Dr Ormosi to confirm the accuracy of the calculations of impacts. He also commented on the consistency of the estimates with our published guidance, and consistency of approach taken between different cases. He was not asked to comment on the underlying

- 2.5 The CMA impact assessment estimates include benefits from cases where the outcome is under appeal at the time of publication of the report. We include these benefits as we consider this ensures the impact assessment is the best estimate of the likely impact of CMA cases at the time of the publication of the report. In addition, this approach also ensures that the benefit estimates are included in the impact assessment at roughly the same time as the costs the CMA incurred in carrying out the case.²¹
- 2.6 In order to calculate the impact of any case or project, the CMA usually estimates the following components based on information and evidence available from the original investigation:
- (a) The size of the affected turnover.
 - (b) The price, quality or other negative effect removed or avoided due to the CMA's intervention (ie usually increased price, but may be in the form of decreased quality, decreased choice, etc).
 - (c) The length of time the detriment (eg higher prices) would have prevailed absent the intervention.
- 2.7 First, we estimate the annual impact on consumers by multiplying the turnover of the affected goods and services by the assumed price increase that was removed or avoided due to our action. Second, we estimate future consumer savings by multiplying the annual impact by the number of years we believe the detriment to consumers would have prevailed. We discount future accruals of benefits (see paragraph 2.13).
- 2.8 Data on the size of the turnover affected by our intervention (referred to as 'affected turnover') is usually gathered by the case team as part of its evidence-gathering and can be recalled from the original investigation. To be conservative, the CMA typically applies a narrow definition of the affected turnover by estimating it as the turnover of the directly affected firms. That is, we typically assume that the price of the goods or services competing with those offered by the firm(s) subject to the investigation in the market are unaffected, even though it is likely that, in some circumstances, they would also be affected by our intervention. At other times, where the CMA tackles a sector more widely (for example, through markets or consumer protection

assumptions where these were based on analysis carried out as part of individual cases (for example, the estimates of consumer detriment resulting from identified competition problems). In his report he made a number of suggestions for the revision of the methodological guidelines to reflect on almost a decade of experience applying the old guidelines, and also to incorporate new areas of assessment.

²¹ It can be several years before appeals are concluded leading to a significant lag between the inclusion of the benefits and costs of certain cases.

work), to estimate the affected turnover we need to make assumptions on the size of the market that is affected by our action.

- 2.9 In relation to the effect avoided or removed due to the CMA's intervention, where possible, we base our estimations on information collected during the original investigation. This may be, under rare circumstances, information on the actual effect (for example, the price overcharge due to an unfair pricing practice, or the amount refunded to customers after cancellations due to restrictions related to Covid-19), or more frequently, an estimation of the likely effect on consumers (which can be informed by the magnitude of upward pricing pressure resulting from a merger) as assessed by the case teams during the original investigation. Where such information and data are unavailable, we apply rules of thumb that are conservative interpretations of estimated effects and consistent with recent academic research.
- 2.10 Similarly, when estimating the expected future duration of the detriment prevailing absent our intervention, we draw on information collected at the time of the original investigation. As a starting point, we tend to take a default duration value that is based on, but not necessarily equal to, existing international practice and academic research, and we adjust this value where case-specific information suggests this would be appropriate.
- 2.11 Ex ante estimates of impact are based on the best information available at the time of estimation, which is typically when the decision or recommendations have been made but the full impact is not yet observable. In contrast, ex post evaluations are usually more robust and are based on information gathered after the recommendations or remedies have been implemented and the resulting impact realised, often several years after the case has been completed. The CMA commissions independent ex post evaluations on a regular basis in order to consider the effects of enforcement and merger review in key markets.
- 2.12 For example, in 2022 the CMA hired the economic consultancy E.CA Economics to undertake an ex-post assessment of merger control decisions involving vertically-related firms.²² E.CA Economics evaluated the CMA's assessment of vertical theories of harm in four merger clearance decisions.²³ The project drew on evidence relied upon by the CMA during the original investigation as well as additional evidence gathered ex-post to determine (among other things) whether the CMA made the right decision. Other ex-post evaluations include an evaluation of the impact and deterrence effect resulting from five competition enforcement cases, carried about by the economic

²² E.CA Economics (April 2022), [Ex-post evaluation of vertical mergers](#).

²³ Tulip/Easey, Heineken/Punch, Mastercard/Vocalink, and Tesco/Booker.

consultancy DotEcon and published in 2018.²⁴ This review estimated the change in behaviour and competition awareness of firms in industries where the CMA had previously taken enforcement action. The review found that awareness of competition law was higher in both the industry where the CMA took enforcement, and in adjacent industries, than the average across businesses in the UK. It also found that some businesses had modified (or intended to modify) an agreement or commercial initiative as a result of enforcement action in their industry.

- 2.13 In line with central government techniques for discounting future accruals of benefits or costs, we discount future consumer savings by the HM Treasury endorsed Social Time Preference Rate (3.5%).²⁵
- 2.14 Under certain circumstances we also need to use the Consumer Price Index to bring the benefits to the price level of the current year. This is the case when, due to the CMA's investigation, consumers are able to seek redress for any past harm suffered.

²⁴ DotEcon (2018), [Evaluation of direct impact and deterrent effect of CA98 cases](#). Based on the results of a survey of businesses, DotEcon assessed awareness of five CA98 cases and of competition law more generally, and sought to quantify the indirect, deterrent effect on firms not subject to the original enforcement action. DotEcon found a clear link between CMA/OFT intervention and greater levels of awareness and understanding of competition law, specifically in relation to the illegality of specific infringing behaviour in the selected CA98 cases. Furthermore, there is evidence to support the view that awareness of cases pursued by the CMA/OFT changes the perception of being caught and prosecuted, ultimately deterring infringing behaviour by other firms. DotEcon estimated that the indirect deterrence effect is plausibly a multiple of the direct effect. Although the effect per firm is small, there is a significant benefit due to the large number of businesses being deterred from engaging in anti-competitive behaviour.

²⁵ See HM Treasury, [The Green Book: Appraisal and Evaluation in Central Government](#).

3. Consumer savings by area

Competition enforcement

- 3.1 The CMA engages in a range of activities aimed at ensuring compliance with the Competition Act 1998 (CA98), including formally investigating and taking enforcement action against anti-competitive practices and using ‘softer’ tools such as providing guidance and targeted compliance initiatives.²⁶ Under the Enterprise Act 2002 (EA02), the CMA can also investigate and prosecute individuals for certain breaches.
- 3.2 We estimate that the CMA’s interventions in this area saved consumers at least £356.2 million in aggregate during the financial years from 2019/20 to 2021/22, representing annual average consumer savings of £118.7 million. These figures are based on anticipated price reductions that are likely to follow the break-up of a cartel or the termination of other unlawful conducts.
- 3.3 Our impact figure for the 2021/22 financial year is based on one competition enforcement investigation, namely that into electric vehicle chargepoints on or near motorways,²⁷ concluded by the CMA in this period. This represents a substantial decrease from 2020/21 when 11 such cases were concluded but is not greatly different from 2019/20 when 3 such cases were concluded. Competition enforcement cases often last for multiple years, so the number of cases concluding in a particular year does not necessarily reflect the amount of work undertaken in that year.
- 3.4 There were a number of competition enforcement cases that concluded in 2021/22 where the offending practice ceased prior to our investigation meaning that we have not included them in the impact assessment.²⁸ Whilst these cases do not involve direct benefits, they are likely to have significant deterrent effects, as demonstrated by the DotEcon report on the deterrence effect of competition enforcement cases mentioned earlier.²⁹

Consumer protection enforcement

- 3.5 The CMA’s consumer protection enforcement work seeks to change trader behaviour that appears to contravene consumer protection legislation using a range of interventions such as publishing guidance, issuing informal warnings,

²⁶ The benefits from these softer tools are not typically included in the quantified estimate of benefits.

²⁷ [Investigation into the supply of electric vehicle chargepoints on or near motorways](#)

²⁸ For example, [Domestic Lighting: anti-competitive practices concerning resale price maintenance](#)

²⁹ DotEcon (2018), [Evaluation of direct impact and deterrent effect of CA98 cases](#). For further discussion, see paragraph 2.12.

accepting undertakings under the EA02, or obtaining court orders. All interventions are aimed at protecting consumers, particularly vulnerable consumers, from rogue trading, unfair commercial practices, and other breaches of consumer protection legislation.

- 3.6 The CMA often works together with other organisations, for example Trading Standards,³⁰ who are also responsible for consumer protection enforcement and tackling unfair trading practices. It also cooperates with other national authorities within the Consumer Protection Cooperation Network to apply and enforce consumer rights legislation. In our impact assessment, we include consumer benefits resulting from these joint actions, where these have been led or significantly influenced by the CMA, by allocating a proportion of the benefits to the CMA.
- 3.7 For the financial years 2019/20 to 2021/22, the aggregate consumer benefit from relevant consumer enforcement work is estimated to be £439.4 million, giving an average of £146.5 million per year. These benefits may include a reduction in consumer detriment as a result of stopping unlawful practices, or the estimated price impact of the CMA's interventions, for example as a result of increased transparency and more informed consumer decisions.
- 3.8 The CMA's Leasehold investigation accounts for the largest part of the 2021/22 impact figure for consumer enforcement.³¹ The Leasehold investigation focused on possible instances of mis-selling and potential unfairness of certain leasehold contract terms. The CMA secured undertakings from several leaseholders to make a number of changes including removing certain clauses relating to increasing ground rents.
- 3.9 The 2021/22 figure does not include estimates for a number of consumer cases where we were unable to develop a robust methodology. For example, we did not include estimates for the consumer law guidance the CMA published in relation to self-funded IVF³² and misleading environmental claims.³³
- 3.10 Our estimates, as already noted, do not include the deterrence effect of the CMA's consumer protection activities, even though we tend to prioritise cases where we expect that changing the behaviour of one business would set an important precedent or have other market-wide implications.

³⁰ For an evaluation of the activities of Trading Standards, see OFT (June 2009), *An evaluation of the impact of the fair trading work of local authority Trading Standards Services in the UK*, OFT1085.

³¹ Leasehold.

³² Self-funded IVF: consumer law guidance.

³³ Misleading environmental claims.

Merger control

- 3.11 The CMA operates both stages of the UK two-stage merger regime. Businesses can (voluntarily) notify a merger to the CMA and, in addition, the CMA has a duty to keep merger activity under review and can investigate mergers that have not been notified to it. At phase 1, the CMA reviews merger situations falling within its jurisdiction³⁴ and refers to phase 2 any cases where there is a realistic prospect of a substantial lessening of competition (SLC) in a UK market. The CMA has the power to accept undertakings in lieu (of reference to phase 2) (UiLs) from the merging parties at phase 1, if these are deemed to address potential concerns identified in the course of its investigations.
- 3.12 At phase 2, a CMA panel of independent members conducts an in-depth investigation to assess if a merger is expected to result in an SLC. If an SLC is expected, the CMA panel decides on the remedies required and can impose remedies by order if it is not able to agree on them with the businesses.
- 3.13 Our estimates of consumer savings in this area include merger proposals amended through UiLs, mergers that are abandoned, and mergers amended or prohibited by the CMA at phase 2.
- 3.14 The impact of phase 1 mergers is scaled down by the 'SLC rate' (which is defined below) to reflect the fact that not all cases where the merger parties remedied the CMA's concern, either through UiLs or abandoning the merger, would have resulted in an SLC at phase 2. The SLC rate is calculated as the proportion of phase 2 mergers completed in the past three years which resulted in SLCs after the parties had offered UiLs that were rejected in phase 1. This approach is in line with our updated methodology explained in detail in the 2016/17 report.³⁵ The SLC rate used to scale down the impact of all phase 1 mergers in the 2021/22 assessment is 71%.³⁶
- 3.15 Using the approach described above, our estimates show that during the past three financial years (2019/20 to 2021/22) the merger regime saved consumers £2,029.7 million in total, giving an average of £676.6 million per year.³⁷

³⁴ Up to 31 January 2020, mergers that fulfilled certain conditions fell within jurisdiction of the European Commission.

³⁵ CMA (July 2017), [CMA impact assessment 2016/17](#).

³⁶ In 2020/21 it was 75% and in 2019/20 it was 83%.

³⁷ Estimates exclude any impact to non-UK customers. In particular, we use the conservative approach of accounting for the impact of mergers with a global frame of reference only on UK sales. For example, if we had

- 3.16 The benefits from the UK merger regime are dependent on the cases that come to the CMA for assessment and are, therefore, driven in part by the economic climate and can vary significantly from year to year. They are also dependent on the nature of the mergers being assessed by the CMA in each year. If a given year happens to see a greater number of anti-competitive mergers being proposed and, therefore, prohibited or remedied by the CMA, then the estimated direct benefits of the merger regime will be greater in that year.
- 3.17 Benefit figures for mergers do not include the wider benefits, such as deterrence, of the CMA's mergers work and the wider merger regime. We would expect deterrence effects to be significant and, therefore, that having an effective merger control regime in itself prevents anticompetitive mergers from being proposed.³⁸

Market studies and market investigations

- 3.18 Market studies are examinations of why particular markets are not working well for consumers and often lead to proposals as to how they might be made to work better. They take an overview of regulatory and other economic drivers in a market and patterns of consumer and business behaviour.
- 3.19 Markets may be referred for a market investigation for further analysis where there are reasonable grounds for suspecting that any feature, or combination of features, of a market in the UK is preventing, restricting, or distorting competition. In estimating consumer savings, we consider the impact of both market studies that have not resulted in a market investigation and completed market investigations. Given the wide variety of projects that our markets work covers, the exact method used to estimate impact differs from case to case. We include ex ante estimates of impact from those projects where the CMA's recommendations and/or orders are expected to be implemented by the relevant bodies (eg regulators and other government departments) and, therefore, have a positive impact on consumers.
- 3.20 When estimating our impact from any markets project, we also consider how likely the recommendations or orders are to be implemented by the relevant bodies. To account for the uncertainty associated with the market and policy context and, therefore, with the overall effectiveness of the remedies, we use

accounted for the impact of phase 1 merger Tronox/Tizir which concluded in 2020/21 on the global market instead of the UK only, its estimate would have been more than 14 times larger.

³⁸ We note that there can also be an effect of 'chilling' where pro-competitive or benign mergers are deterred due to the merger control regime; however, we would expect this effect to be low because the CMA operates in a voluntary notification framework.

cautious assumptions when estimating the benefits. Moreover, where we think that the proposed remedies may not be fully implemented by the regulators, estimates are further scaled down according to the assumed likelihood of implementation.

- 3.21 We estimate that the direct consumer benefits from the CMA's interventions through the markets regime were £3,967.0 million in total during the financial years from 2019/20 to 2021/22, giving an average of £1,322.3 million per year.
- 3.22 Two markets cases were concluded in the financial year 2021/22. They were the:
- (a) Electric vehicle charging market study,³⁹
 - (b) Children's Social Care study.⁴⁰
- 3.23 Although the recommendations of both of these studies have not yet been implemented, the government has formally responded to each of them and has acceded a number of their recommendations.⁴¹⁴² As described in paragraph 3.21, the expected benefits associated with the recommendations in these cases have been scaled down to reflect the uncertainty around their full implementation.

³⁹ [Electric vehicle charging market study](#).

⁴⁰ [Children's social care study](#).

⁴¹ Department for Transport (March 2022), [Response to CMA market study into UK electric vehicle charging](#).

⁴² Department for Education (May 2022), [Minister's letter to Competition and Markets Authority \(CMA\)](#).

4. Costs

- 4.1 To ensure that yearly fluctuations in the cost figure which are not reflective of the true cost of running the CMA do not distort the picture for the CMA's impact, we use a three-year moving average for total costs. This is consistent with the way in which we report estimated benefits.
- 4.2 For the purposes of calculating the benefit to cost ratio, the total costs of the CMA exclude the costs incurred in fulfilling the CMA's function with regard to the determination of regulatory appeals as we do not include any benefits from these in the impact assessment.
- 4.3 On this basis, the average annual CMA cost over the financial years 2019/20 to 2021/22 is estimated to be £100.7 million.