

# Competition assessment guidelines

Part 1: overview

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## 1. Purpose and scope of these guidelines

- 1.1 The Competition and Markets Authority (CMA) is a non-ministerial government department, established by the Enterprise and Regulatory Reform Act 2013, to carry out certain functions on behalf of the Crown. Its statutory duty is to promote competition in the interests of consumers. In fulfilling its duty, the CMA can make proposals, or give other information or advice to Ministers, their departments, and to other public authorities in respect of any aspect of the law, or proposed changes in law, regulation or policy.<sup>1</sup>
- 1.2 The CMA can provide advice and training, on request, to officials in all parts of government, including the Devolved Administrations, to help them understand and analyse the effects on competition of existing and proposed law, regulation and policy.
- 1.3 Given that the CMA has limited resources, however, policy makers should consider in the first instance carrying out their own assessment of whether their proposals will have an impact on competition. This publication aims to help policy makers conduct such an assessment. Where there is a complex competition or consumer issue, the CMA may be able to provide further assistance and support.
- 1.4 This guidance can be used at any point in the policy cycle. Early consideration of competition impacts generally better enables risks to competition to be identified and addressed in policy choices and design.

### **Why consider the impact a policy or regulatory proposal will have on competition?**

- 1.5 Competition is a process of rivalry between firms and, where it is effective, encourages firms to deliver benefits to consumers in terms of lower prices, higher quality and more choice.
- 1.6 Competing firms may focus on offering the lowest price, particularly where products are standardised. Most suppliers<sup>2</sup> will try to compete in several ways in addition to price, for example by developing new improved products, by offering products of differing quality or characteristics, by branding and advertising the differences in their products relative to their competitors', or by

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<sup>1</sup> Section 7(1), Enterprise Act 2002.

<sup>2</sup> The term 'suppliers' includes any private entity, any public body acting in as an 'undertaking' engaging in economic activity, and any not-for-profit firm that is competing in the market.

using different sales channels. Competing suppliers will seek to find a unique selling point that offers consumers advantages over rival goods or services.

- 1.7 Policy measures<sup>3</sup> that bear on economic activity can affect competition, but the impacts are likely to depend on the market and the policy at hand. This is especially true of regulation: that is, rules affecting what suppliers can do. From the CMA's perspective, whether there is 'more' or 'less' regulation overall matters less than the consequences of regulation for consumers. The characteristics of a market, or the nature of the objective government is seeking to achieve, may mean that well-designed regulation is the best approach available. In other cases, alternatives to regulation will be preferable, or best used in addition to other measures.
- 1.8 Policy makers introducing new regulations are required to conduct an impact assessment. Devolved nations have their own arrangements and material, to which policy makers can refer. Northern Ireland has its own [regulatory impact assessment guidance](#) which does include reference to impact on competition under the Economic Impact heading, Scotland has its own [Business Regulatory Impact Assessment \(BRIA\)](#) which includes a competition assessment (which also links to the CMA competition impact assessment guidelines and checklist), and Wales apply the [Welsh Ministers' regulatory impact assessment code for subordinate legislation](#)
- 1.9 For policy makers in the UK government, the [Better Regulation Framework Manual](#)<sup>4</sup> states that, as part of the impact assessment process, policy makers should consider whether the proposal might have an impact on competition. If the policy is likely to have an impact on competition, policy makers should carry out analysis of the impact on competition, and these guidelines are meant to be used to inform that assessment.
- 1.10 However, these guidelines are intended to be useful not just at the point an impact assessment is to be carried out, but throughout the policy development process. For example, early identification of the markets affected, and consideration of the "checklist" questions (see Section 2, below), can help ensure the right evidence is collected to understand potential competition impacts as policy is developed and consulted on. Equally, the questions can be asked at evaluation stage, to help understand whether and how a policy intervention has affected a market, and whether there have been unintended or unforeseen consequences.

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<sup>3</sup> For the purposes of these guidelines, the term "policy measure" or "measure" refers to any proposed or existing policy, regulation, law or other government intervention.

<sup>4</sup> Note that as of July 2023, this guidance is out of date and new rules will apply <https://www.gov.uk/government/publications/better-regulation-framework#full-publication-update-history>.

## Going beyond the guidelines

- 1.11 These guidelines do not assume technical knowledge or understanding of economics. However, the CMA recommends that at an early stage in the process policy professionals involve departmental specialists (including for example, their economists and lawyers) in the consideration of the potential effects of a proposed policy on competition. The guidelines should be used in conjunction with other resources like the [Better Regulation Framework Manual](#)<sup>5</sup> and the [Treasury Green Book](#).
- 1.12 These guidelines do not aim to address all practical problems policymakers encounter when designing new interventions. Those who wish to speak to the CMA about specific issues, or who want to request further explanation or training on the use of this document should email us at [advocacy@cma.gov.uk](mailto:advocacy@cma.gov.uk).
- 1.13 The CMA also has functions relating to the UK internal market and the subsidy control regime that may be of relevance to policymakers. Further information regarding these functions and how the CMA exercises them can be found in:
- (a) [the Office for Internal Market \(OIM\)](#)<sup>6</sup>,
  - (b) [the Subsidy Advice Unit \(SAU\)](#)<sup>7</sup>.

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<sup>5</sup> Note that as of July 2023, this guidance is out of date and new rules will apply <https://www.gov.uk/government/publications/better-regulation-framework#full-publication-update-history>.

<sup>6</sup> <https://www.gov.uk/government/organisations/office-for-the-internal-market>

<sup>7</sup> <https://www.gov.uk/government/organisations/subsidy-advice-unit>

## 2. What you need to do to complete a competition assessment

2.1 In order to compete a competition assessment, policy makers need to conduct the steps shown in Figure 1 below.

Figure 1: Pre-screening before in-depth assessment

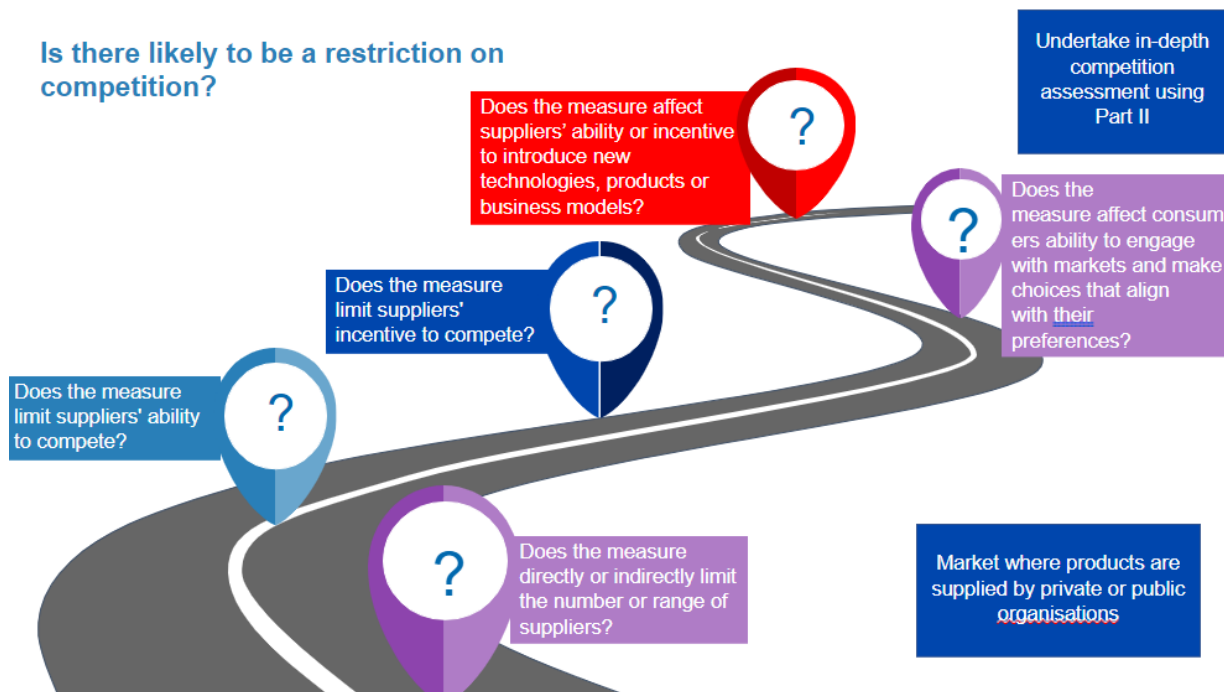
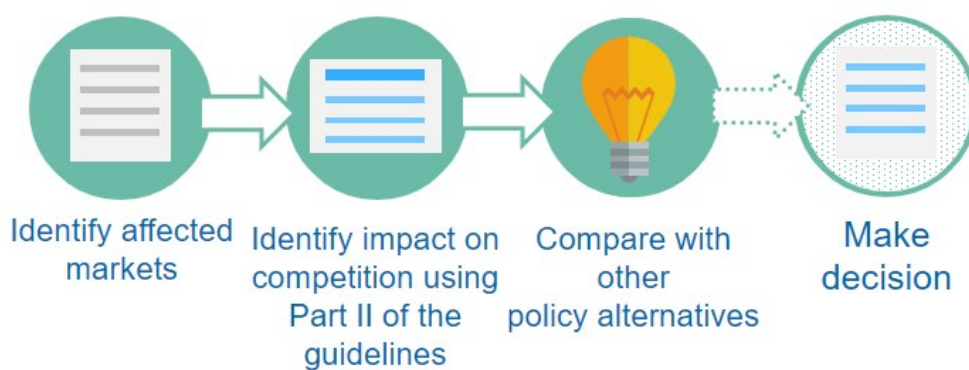


Figure 2: Undertake an in-depth competition assessment



## Stage 1: Initial screening

- 2.2 Once the purpose of the proposed measure has been understood, it is important to undertake an initial screening to see whether an in-depth assessment of the impact on competition is warranted.
- 2.3 Step 1 of the initial screening asks **whether the policy measure affects a market where products or services are supplied by the private or public sector**. It could be that the measure clearly impacts on the supply of certain products or services. For example, a ban on apple advertising would directly impact on the market for apples and potentially the market for fruit. However, in certain cases, the measure under consideration may set standards in areas where no market exists and there is no possibility of an impact on competition arising from the policy change. For example, a regulation requiring government departments to be structured in a certain way is unlikely to have a significant impact on a market and, in turn, competition.
- 2.4 Should a market be affected by the policy measure, policy makers should move to the next stage in the initial screening and apply the five questions which form the competition checklist, as set out below. In doing so, it should be possible to identify whether the measure falls into one of the areas likely to raise concern. A competition concern may be identified if at least one of these conditions outlined in Table 1 below are met.

**Table 1: Competition checklist**

1	Will the measure directly or indirectly limit the number or range of suppliers?
2	Will the measure limit the ability of suppliers to compete?
3	Will the measure limit suppliers' incentives to compete?
4	Will the measure affect consumers' ability to engage with the market and make choices that align with their preferences?
5	Will the measure affect suppliers' ability and/or incentive to introduce new technologies, products or business models?

- 2.5 If the answer to any of these questions is 'yes', then policy makers should move to undertake an in-depth assessment of the likely impact.

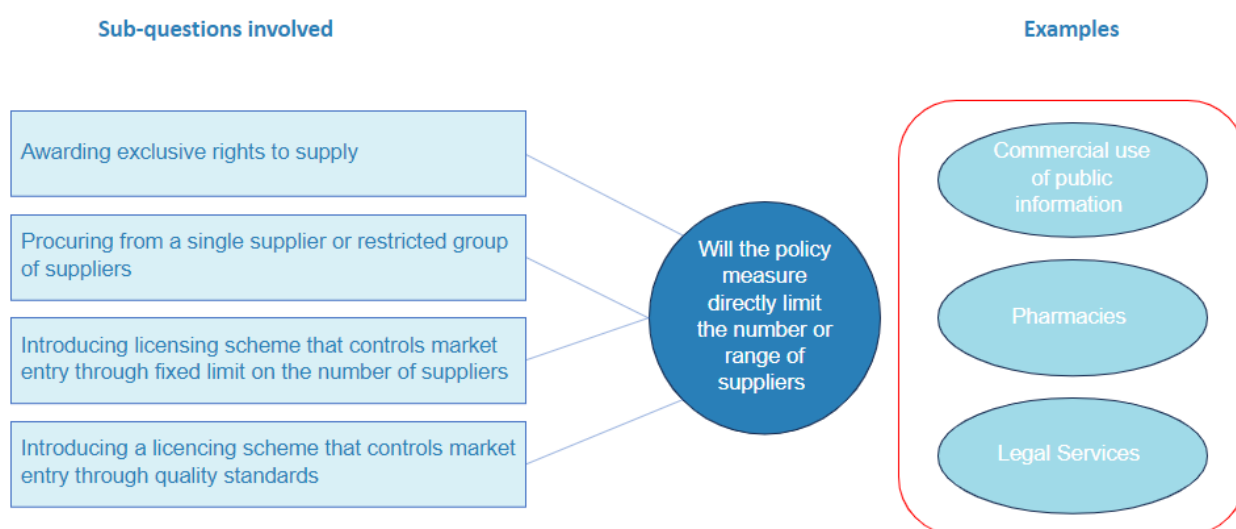


## Stage 2: In-depth competition assessment

- 2.6 Should policy makers consider that an in-depth competition assessment is required then they will then need to identify the affected market(s), establish a baseline (that is, a counterfactual absent the policy or regulatory intervention) and conduct an assessment of the likely impact the measure will have on the market compared to the baseline. Part 2 of these guidelines provides further detail on how to conduct an in-depth assessment.
- 2.7 In doing so, policy makers should consider the relevant competition checklist questions. These questions are presented in the in-depth competition checklist at Table 2 below.

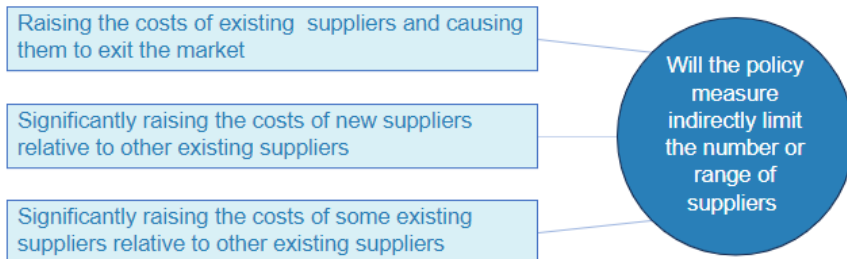
**Table 2: In-depth competition checklist**

Question 1a: Will the measure directly limit the number or range of suppliers?

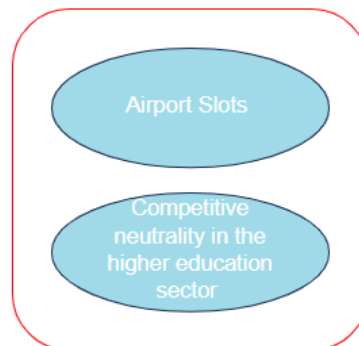


Question 1b: Will the policy measure indirectly limit the number or range of suppliers?

Sub-questions involved

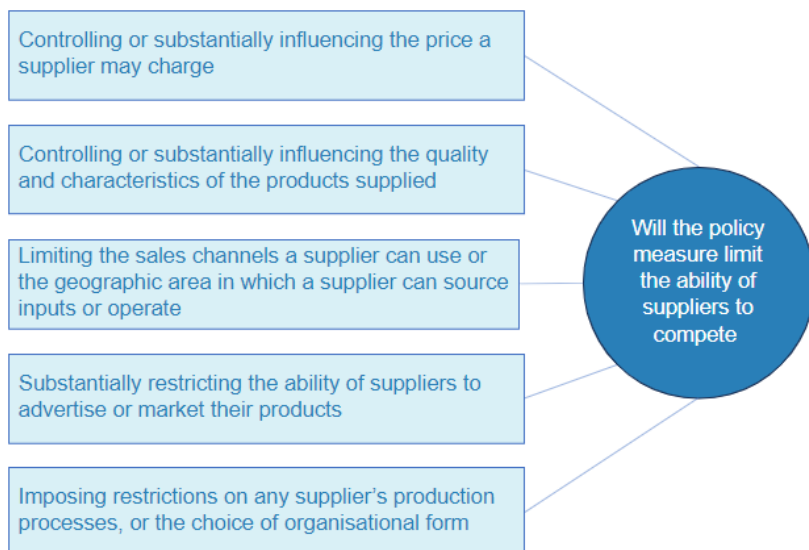


Examples

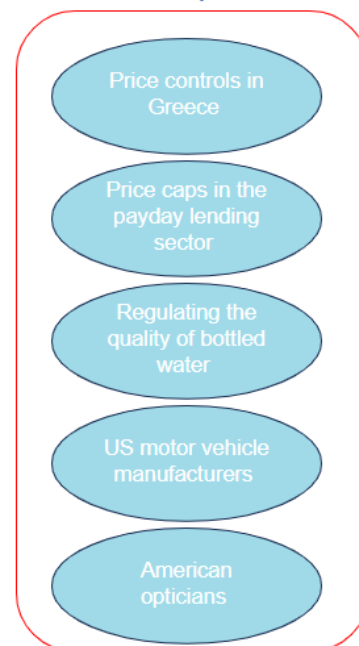


Question 2: Will the policy measure limit the ability of suppliers to compete?

Sub-questions involved



Examples



### Question 3: Will the policy measure limit suppliers' incentive to compete?

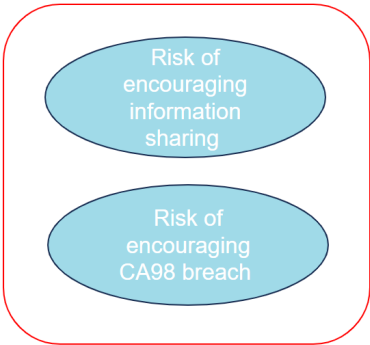
#### Sub-questions involved

Incentivising suppliers to co-ordinate their behaviour or publish competitively sensitive information and thereby dampen competition

Exempting industry or certain suppliers from the operation of general competition law



#### Examples



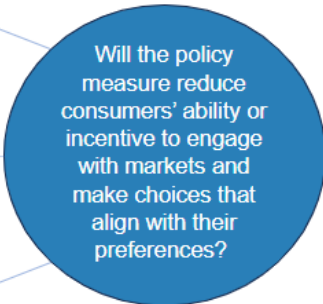
### Question 4: Will the policy measure reduce consumers' ability or incentive to engage with markets and make choices that align with their preferences?

#### Sub-questions involved

Limiting the ability of consumers to decide from whom they purchase

Changing the information available to consumers but not improve their ability to make informed decisions or shop around

Reduce the mobility of consumers by increasing the explicit or implicit costs of changing suppliers



#### Examples



Question 5: Will the policy measure affect suppliers' incentive or ability to introduce new technologies, products or business models?

**Sub-questions involved**

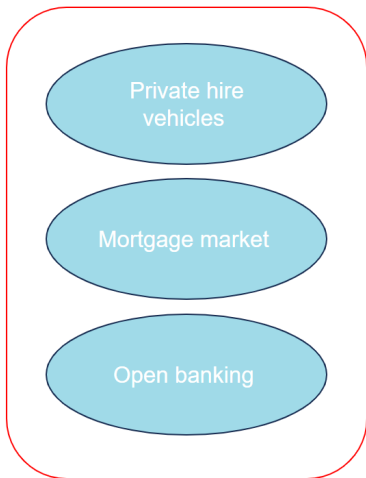
Affecting markets in which innovation has been a key feature in recent years

Constraining the deployment of new technology or preventing firms from operating a particular business model

Limiting the prospect of future innovation

Will the policy measure limit suppliers' ability or incentive to introduce new technologies, products or business models?

**Examples**



<p><b>Q1a: will the policy measure directly limit the number or range of suppliers by:</b></p> <ul style="list-style-type: none"> <li>• Awarding exclusive rights to supply?</li> <li>• Procuring from a single supplier or a restricted group of suppliers?</li> <li>• Introducing a licensing scheme that controls market entry through a fixed limit on the number of suppliers?</li> <li>• Introducing a licensing scheme that controls market entry through quality standards?</li> </ul>	<p>A detailed overview of this question is provided in Part 2 of the Competition assessment. Please see Chapter 3.</p> <p>Examples to help you consider whether this issue applies to your proposal:</p> <ul style="list-style-type: none"> <li>• Commercial Use of Public Information (CUPI) market study, page 13</li> <li>• Pharmacies, page 17</li> <li>• Legal Services market study, page 19</li> </ul>
<p><b>Q1b: will the policy measure indirectly limit the number or range of suppliers by:</b></p> <ul style="list-style-type: none"> <li>• Raising the costs of existing suppliers and causing them to exit the market?</li> <li>• Significantly raising the costs of new suppliers relative to existing suppliers?</li> <li>• Significantly raising the costs of some existing suppliers relative to other existing suppliers?</li> </ul>	<p>A detailed overview of this question is provided in Part 2 of the Competition assessment. Please see Chapter 3.</p> <p>Examples to help you consider whether this issue applies to your proposal:</p> <ul style="list-style-type: none"> <li>• Airport slots, page 21</li> <li>• Competitive neutrality in the higher education sector, page 24</li> </ul>
<p><b>Q2: will the policy measure limit the ability of suppliers to compete by:</b></p> <ul style="list-style-type: none"> <li>• Controlling or substantially influencing the price a supplier may charge?</li> <li>• Controlling or substantially influencing the quality and characteristics of the products supplied?</li> <li>• Limiting the sales channels a supplier can use, or the geographic area in which a supplier can source inputs or operate?</li> <li>• Substantially restricting the ability of suppliers to advertise or market their products?</li> <li>• Imposing restrictions on any supplier's production processes, or the choice of organisational form?</li> </ul>	<p>A detailed overview of this question is provided in Part 2 of the Competition assessment. Please see Chapter 4.</p> <p>Examples to help you consider whether this issue applies to your proposal:</p> <ul style="list-style-type: none"> <li>• Price controls in Greece, page 26</li> <li>• Price caps in the payday lending sector, page 27</li> <li>• Regulating the quality of bottled water, page 29</li> <li>• US motor vehicle manufacturers, page 31</li> <li>• American opticians, page 32</li> </ul>
<p><b>Q3: will the policy measure limit suppliers' incentives to compete by:</b></p> <ul style="list-style-type: none"> <li>• Incentivising suppliers to coordinate their behaviour or publish competitively sensitive information and thereby dampen competition?</li> <li>• Exempting an industry or certain suppliers from the operation of general competition law?</li> </ul>	<p>A detailed overview of this question is provided in Part 2 of the Competition assessment. Please see Chapter 5.</p> <p>Examples to help you consider whether this issue applies to your proposal:</p> <ul style="list-style-type: none"> <li>• Risks created by policies that encourage information sharing, page 35</li> <li>• Policies and their risk of encouraging CA98 breach, page 36</li> </ul>
<p><b>Q4: will the policy measure reduce consumers' ability or incentive to engage with markets and make choices that align with their preferences by:</b></p> <ul style="list-style-type: none"> <li>• Limiting the ability of consumers to decide from whom they purchase?</li> <li>• Change consumers' ability to make informed choices?</li> <li>• Reducing the mobility of consumers by increasing the explicit or implicit cost of changing suppliers?</li> </ul>	<p>A detailed overview of this question is provided in Part 2 of the Competition assessment. Please see Chapter 6.</p> <ul style="list-style-type: none"> <li>• Helping people get a better deal: Learning lessons about consumer facing remedies FCA and CMA 2018, page 43</li> </ul>

<p><b>Q5: will the policy measure affect suppliers' incentive or ability to introduce new technologies, products or business models by:</b></p> <ul style="list-style-type: none"> <li>• Affecting markets in which innovation has been a key feature in recent years?</li> <li>• Constraining the deployment of new technology or prevent firms operating a particular business model?</li> <li>• Limiting the prospect of future innovation?</li> </ul>	<p>A detailed overview of this question is provided in Part 2 of the Competition assessment. Please see Chapter 7.</p> <ul style="list-style-type: none"> <li>• TfL Proposals for Private Hire Vehicles, page 51</li> <li>• FCA Mortgage Market Review, page 54</li> <li>• Open Banking, page 58</li> </ul>
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2.8 Conducting the in-depth assessment is likely to require the policy maker to:

- consider and compare alternative policy measures to mitigate adverse impacts on competition;
- predict implementation issues to prevent unintended consequences on competition. Practically, this can be achieved by engaging with stakeholders to get a better indication of what impact the proposal will have on suppliers, potential entrant and consumer incentives in the affected markets; and
- evaluate the impact of policy measures on competition to inform future interventions, or adjust policies as possible.

***Considering alternative policy proposals***

2.9 Where a proposed policy measure is likely to harm competition, policy makers should consider whether there are alternative proposals that will achieve the same policy objective but with less adverse effects. Part 2 provides an overview of some alternatives to regulation and the techniques that can be used to compare different options.

2.10 Proposals that have the least adverse effect on competition but still enable policy objectives to be achieved, should be ideally preferred (for example, if the policy objective is to reduce negative externalities tradeable permits are generally preferred to fixed quotas from a competition perspective). If this not possible, then, as a principle of good policy making, it is important that the issue is raised in discussions with decision makers and there is a clear justification as to whether and why other considerations are trumping the impact on markets.

### ***Predicting implementation issues***

- 2.11 Policy makers should also consider whether and how the implementation regulation affects competition. It is often the case that the implementation of a regulation creates competition issues that were not foreseen earlier in the policy cycle.
- 2.12 So, for example, a consultation on the roll-out of solar panels might conclude that minimum efficiency standards are required in order for solar panel firms to be eligible for a subsidy. Such a requirement might distort the market for panels as fewer models or manufacturers might be compliant than originally envisaged. The price for solar panels might subsequently be higher than was originally envisaged when a competitive market with a full range of suppliers was predicted.
- 2.13 Where policy makers use, or collect data and information about the market(s) affected by their proposals, they should remain aware that views expressed, or data or information supplied, may be selective and could well reflect vested interests. Policy makers should carefully consider stakeholders' interests and the supportive evidence stakeholders provide, when assessing the objectivity and relevance of stakeholders' views. Policy makers should also consult with and seek information from a wide range of stakeholders, including, for example, potential entrants, smaller businesses and consumers – to ensure that any findings are not influenced by a limited pool of stakeholders.

### ***Plan to evaluate impact on competition after a measure is introduced***

- 2.14 It is also advisable at an early stage of the policy making process to consider how to evaluate the impact of a policy measure. HM Treasury's Green Book provides further guidance of evaluating policies against their stated objectives.
- 2.15 Table 3 below provides further insight into the types of indicator and data that could be usefully analysed to determine whether the measure has had a negative impact on competition.

**Table 3: Plan to evaluate impact on competition**

<b>Has the policy led to worsening market trends, demand and supply conditions, for example...</b>	<b>...and have market outcomes got worse?</b>
<b>Market trends</b> <ul style="list-style-type: none"> <li>• Significant increase in market concentration levels</li> <li>• Reduction in market entry and expansion, and increased exit</li> </ul>	<ul style="list-style-type: none"> <li>• Reduction in product diversity or production of close substitutes</li> <li>• Increase in prices</li> <li>• Reduction in the rate of introduction of new products or new business models.</li> <li>• Decrease in consumption levels</li> <li>• Reduction in efficiency</li> <li>• Decrease in quality of supply</li> </ul>
<b>Information availability or utility</b> <ul style="list-style-type: none"> <li>• Reduction in information</li> <li>• Increase in the complexity of information</li> <li>• Information presented less clearly</li> </ul>	
<b>Consumer behaviour</b> <ul style="list-style-type: none"> <li>• More obstacles to switching between suppliers</li> <li>• Less helpful defaults or switching prompts</li> <li>• Reduction in switching levels</li> <li>• Increase in firms exploiting behavioural biases</li> </ul>	
<b>Entry and expansion conditions</b> <ul style="list-style-type: none"> <li>• Increase in the cost of entering and operating at the Minimum Efficient Scale needed to achieve reasonably competitive level of costs</li> <li>• Decrease in the likelihood of entry or investment in new market innovations within a timescale that would affect incumbents' incentives</li> <li>• Firms becoming more capacity constrained</li> <li>• Increase in the cost of exiting the market</li> </ul>	
<b>Firm behaviour</b> <ul style="list-style-type: none"> <li>• Closer correlation between firm behaviour (e.g. investment decisions and pricing decisions)</li> <li>• Retrenchment into 'core' territories and a reduction in head-to-head competition and product innovation</li> <li>• A reduction in production of close substitutes</li> </ul>	

## Positive impact on competition

2.16 These guidelines are designed to help policy makers analyse whether policy proposals will have a negative impact on competition. Nevertheless, the guidelines may also be useful for policy makers seeking to introduce pro-competitive policy changes. For example, the five competition assessment questions explored in the guidance can be reversed to identify potentially pro-competitive measures:

- Does the policy measure directly or indirectly increase the number or range of suppliers?



- Does the policy measure remove restrictions on the ability of suppliers to compete?
- Does the policy measure increase suppliers' incentives to compete?
- Does the policy measure encourage consumers' ability or incentive to engage with markets and make choices that align with their preferences?
- Does the policy measure incentivise or enable suppliers to introduce new products, technologies or business models?