

## **Submission to Lords Industry and Regulators Committee for their Inquiry into UK Regulators**

The Chair of the Competition and Markets Authority (CMA), Marcus Bokkerink, gave evidence to the Committee on 29<sup>th</sup> November 2023. Further to this evidence session, please find below written responses from the CMA to the Committee's call for evidence.

**1st December 2023**

## **1. Question 1 - Are UK regulators being given a clear job to do?**

- 1.1. Unlike sectoral regulators, the CMA's role is UK-wide and cross-economy. We do not focus on any one sector, nor do we have multiple statutory duties or objectives that we are required to prioritise or balance against each other. We benefit from a single clear, statutory duty: "to promote competition, both within and outside the United Kingdom, for the benefit of consumers."
- 1.2. While we have a wide range of statutory functions that we deliver in line with the relevant legislation, this single statutory duty underpins all of our work, with the single exception noted below. It provides a clarity and consistency of purpose that enables us to deliver effectively across all our different functions, focused on outcomes. The only exception is the CMA's internal market function, where Parliament gave us a separate statutory objective of supporting, through the application of economic and other expertise, the effective operation of the UK internal market.
- 1.3. In terms of clarity around how we approach and prioritise our work, as an independent non-Ministerial government department we are able to set long-term strategy in a way that provides consistency and stability for stakeholders. We also have the flexibility to make targeted adjustments to focus attention and delivery where it will have the most impact.
- 1.4. Our 2023 Annual Plan represented a step-change in our long-term strategic approach. It includes a clear outline (for us and all our stakeholders) not just of our purpose anchored in our statutory duty but also, flowing from that, our overarching ambition, medium-term priorities for the next three to five years, and annual areas of focus. This has reinforced the clarity and consistency (for the CMA and our stakeholders) with which we prioritise, plan and manage our pipeline of work. It also helps ensure that we remain focused on the things that matter most to people, businesses and the UK economy. The UK government issues a Strategic Steer to the CMA setting out expectations for how we should approach our work. The CMA has regard to this steer when we set our strategy and the government has recently published a new Strategic Steer.

## **2. Question 2 - Is the right balance being struck between the responsibilities of regulators and those of the Government, particularly where there are political or distributional trade-offs that need to be resolved?**

- 2.1. Our purpose is to help people, businesses and the UK economy by promoting competitive markets and tackling unfair behaviour. In order to achieve that, the CMA has been assigned a range of functions by parliament and our role in exercising those functions is defined in legislation.

2.2. In some cases, the CMA operates entirely independently from government. For example, the CMA's merger control function. This independence is important because it ensures our decisions are objective and evidence-based and are not influenced by vested interests or short-term political expediency. Outcomes are not driven by how loudly companies protest, nor how well-funded they are. This builds consistency and predictability in decision-making over time and increases trust in the decisions that are taken and in the regime itself.

2.3. In other cases, the CMA has a purely advisory role. For example, the CMA's subsidy control and internal markets functions fall into this category. This ensures that the government can benefit from the CMA's expertise, but decisions involving a more political dimension can properly be taken by the UK government or devolved administrations, as appropriate.

2.4. Our markets function allows us sometimes to directly remedy problems we find in markets ourselves, or otherwise to make recommendations to government or others for them to make changes. This means that where there are multiple potential policy objectives in play, with trade-offs between them, we can recommend action that we believe will benefit competition and consumers, but allow government and other public authorities to consider political or distributional trade-offs.

2.5. In the CMA's experience the balance between what is the CMA's responsibility and what is the government's responsibility is correctly struck. This balance is debated whenever the CMA is given a new function by parliament. The CMA delivers the functions that parliament has chosen to place in an independent expert body, and the design of those functions reflects the responsibilities that it finds helpful to place in such a body. In exercising its advisory roles, it remains for government to consider the CMA's advice and perspective alongside any wider social, political or distributional trade-offs.

### **3. Question 3 - Are regulators appropriately independent of government? Is the right balance being struck between strategic and political input from government and preserving the operational independence of the regulators?**

3.1. The CMA is an independent non-ministerial UK government department. Independence in decision-making is a critical feature of how the CMA works and the functions we deliver. Independence is key to ensure that decisions are objective and evidence-based, building consistency and predictability over time. This in turn creates and maintains the best possible conditions for investor confidence, innovation and consumer trust.

3.2. Although the CMA makes its decisions independently, this does not mean that we operate in a silo, disconnected from the broader landscape. Understanding

the realities of the economic, social, technological and political context in which we carry out our functions is often key to achieving outcomes. This is especially true given that today's turbulent geopolitical and social-economic landscape is characterised by major structural and economic shifts. Our work increasingly focuses or touches on systemic issues, such as digital markets and emerging technologies, climate change and other issues of pressing public concern, such as the cost of living.

3.3. The CMA's public profile and responsibilities have also increased since Brexit. Our merger control regime now reviews some of the largest global mergers and acquisitions and we are now responsible for investigating global cartels and cross-border anticompetitive practices affecting UK markets. This has naturally brought increased interest and debate around certain aspects of our work.

3.4. As a result of this wider context, it is to be expected that the degree of political and public discourse around our work will remain high for the foreseeable future, perhaps permanently. However, political interest is distinct from interference in independent decision-making. This is not something the CMA has ever experienced. Whilst the environment in which we discharge our responsibilities may sometimes be characterised by competing interests in our work, that does not change the well-established and transparent processes by which we reach objective, evidence-based, independent decisions.

3.5. Independence does not, however, imply that we should not have regard to the government of the day, which represents the interests of the constituencies we serve. It is proper and helpful that the UK government and the devolved administrations feed in to and inform the CMA's work. Indeed, we have regular interaction with the UK government and across each of the devolved nations to facilitate this. This informing and input is done without compromising the CMA's decision-making independence, for example:

- **Strategic steer:** the UK government issues a Strategic Steer to the CMA setting out expectations for how we should approach our work. The CMA has regard to this steer when we set our strategy and when we make decisions on our priorities, although the final decision is taken by the CMA. The government has recently published a new Strategic Steer.
- **Advocacy:** One of the CMA's statutory functions is to give information or advice on matters relating to any CMA functions to any Minister or other public authority. Ministers (as well as Select Committees and individual Parliamentarians) will call upon the CMA from time to time to look into particular issues of interest or concern. The CMA has expertise that can be helpful for government to draw on. For example, we recently provided advice to the Government on how competition and consumer law frameworks could be enhanced to better support net zero and sustainability goals. While our decisions about whether to undertake such work, and the form it takes, are still independent from government and

subject to our published prioritisation principles, these calls can bring new issues to our attention or provide new evidence on areas already under consideration.

- **Remedies:** effective action often depends on government implementing the CMA's recommendations. We work closely with government on this.

4. **Question 4 - Does the Government provide too much or too little guidance to regulators in making decisions, particularly in deciding between different objectives and priorities?**

- 4.1. The CMA's single statutory duty means we may be in a different position to regulators whose decisions involve trade-offs between different goals and objectives based on more complex arrangements than this. Where Government provides us with guidance on priorities, it is more likely to be on where we focus our efforts (for example through the Strategic Steer), rather than on any decision we ultimately reach.
- 4.2. As noted above, there are various routes for government to feed into our work and our priorities and we have regular interactions with a wide range of government stakeholders, including with the Department of Business and Trade (DBT, our sponsor department), HM Treasury and other Whitehall departments, as well with as the Devolved Administrations.
- 4.3. Overall, we consider that an appropriate balance is struck currently between government providing guidance to the CMA about priorities and expectations and the CMA having independence to decide how best to prioritise the CMA's limited resources.
- 4.4. More broadly in terms of how we ourselves prioritise our work, we are mindful of the need to provide transparency and clarity not only to government but across our stakeholders. To this end, we recently published revised 'Prioritisation Principles', which help guide the choice of work where the CMA has discretion to act (noting that a considerable proportion of our work, including around mergers, is non-discretionary). These are (i) strategic significance (ii) likely impact (iii) whether the CMA is best placed to act (iv) whether we have the right resources and (v) the risks of our taking action.
- 4.5. As noted above, on a year-ahead basis our Annual Plan provides an in-depth and transparent enunciation of our longer-term priorities and short-term areas of focus, while our Annual Report retrospectively outlines and explains the choices we have made across our discretionary portfolio.
- 4.6. Our work is also guided and shaped through external engagement with an increasingly broad group of stakeholders. We have not only been increasing the regularity and frequency of engagement with these diverse

constituencies, but also pro-actively seeking ways to become more participatory and inclusive in our approach. For example, we have undertaken a programme of Board meetings outside London, and in the last few months alone hosted hundreds of participants at our offices and online for events on AI, merger reform, and sustainability.

4.7. Last year, the CMA used the consultation process for our Annual Plan to identify and engage with a wider range of stakeholders than ever before across the four nations of the UK, including consumer representative bodies, third sector organisations, business and investor representative associations. The objective was to develop new and deeper relationships as part of an ongoing, open dialogue. We plan to take a similar approach for our Annual Plan this year.

## **5. Question 5 - Are the roles and remits of different regulators sufficiently discrete, or is there overlap and duplication?**

5.1. The CMA is the UK's principal competition and consumer protection authority, meaning we have a discrete role in designated areas, for example the task for reviewing the competition impacts of mergers. However, we share responsibility for promoting competition and protecting consumers from unfair practices with a range of regulators and other bodies and enforcers across the UK. These include, for example, sector regulators involved in the competition concurrency arrangements, members of the Consumer Protection Partnership, and enforcers like Trading Standards Services.

5.2. There is a benefit to shared responsibility between sector regulators and the CMA, in that it brings together sectoral knowledge and understanding with an economy-wide perspective. It also helps the regulatory community more effectively address increasingly pressing system-wide issues and risks, such as digital, data and AI, or energy and climate change.

5.3. It should be noted, however, that there is a risk of overlap and duplication to be mitigated here. We seek at all times to minimise the burden of overly complex or duplicative regulation, which hinders the benefits and positive outcomes we seek to deliver for the UK. Mindful of this, we have developed frameworks to ensure co-ordination in the exercise of concurrent powers and we are in the process of reviewing these arrangements (see further the answer to Question 6).

5.4. In some areas, the CMA and the regulators hold complementary roles. For example, regulators are responsible for setting prices for access to monopoly infrastructure in their sectors, while the CMA has a quasi-judicial role of considering appeals against certain of these decisions. In other areas, we may have different responsibilities in relation to the same market or business activity. Digital markets serve as an example, where Ofcom, the ICO, the

FCA and CMA each have responsibility for different aspects digital regulation. In broad terms, the CMA is concerned with the promotion of competition for the benefit of consumers. Ofcom has responsibility for online safety, cybersecurity and the resilience of UK communications networks. The Information Commissioner's Office has responsibility for upholding personal data rights. The FCA has responsibility for the integrity of the UK financial system.

5.5. Recognising the need for close working, the CMA, Ofcom, ICO and FCA together established the Digital Regulation Cooperation Forum (DRCF) to ensure cooperation between each of the regulators active in this space, to ensure that the UK benefits from coherent, informed and responsive regulation of the digital economy. Where regulatory regimes intersect, the DRCF helps to resolve potential tensions, offering clarity for consumers and industry. (see further our answer to Question 6).

## **6. Question 6 - How effectively do regulators co-operate with one another, and how could this be improved?**

6.1. Effective cooperation with other regulators is central to the CMA delivering on our objectives. We are continually considering how we can improve and enhance this aspect of our work, particularly in the context of rapidly developing system-wide markets and technologies, such as digital, data and AI.

6.2. Cooperation with regulators on the promotion of competition in the regulated sectors takes place through the concurrency arrangements. This includes the UK Competition Network, a forum for multilateral engagement between the sector regulators and the CMA. The CMA also has bilateral relationships with the sector regulators, underpinned by statutory provisions,<sup>1</sup> guidance,<sup>2</sup> and memorandums of understanding on how we will exercise our shared powers. Cooperation through the concurrency arrangements helps ensure consistency in the application of the competition regime whilst facilitating the sharing of best practice, knowledge, and resources.

6.3. Through these arrangements, the CMA and sector regulators share information on potential competition law investigations and decide who is best placed to lead in any given case. We also consult ahead of exercising concurrent markets functions. Staff are regularly seconded to support one another's work, with these arrangements providing an important means of sharing and transferring skills, expertise and resource.

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<sup>1</sup> The Competition Act 1998 (Concurrency) Regulations 2014

<sup>2</sup> Concurrent application of competition law to regulated industries: CMA10

6.4. The CMA recently decided to launch our own review of the effectiveness of the competition concurrency arrangements, with the aim of optimising this where possible. The review will consider the objectives and performance of concurrency, ten years on from a series of reforms which established the existing arrangements. We have sought external feedback, publishing a call-for-inputs in August, including posing the question of how well cooperation is working in practice. In particular, we want to understand the extent to which sharing competition law powers with the CMA is helping sector regulators achieve their objectives, and the extent to which it strengthens the competition regime as a whole. We plan to report on our findings in Spring next year.

6.5. In this context, we note that the Government has announced (in its consultation on Smarter Regulation: Strengthening of the energy, water and telecoms sector) that it will consider concurrency as part of its wider review. The Government will, however, consider the report we plan to publish following our review as well as the views that we receive from stakeholders.

6.6. In respect of the regulation of digital markets, the DRCF was established precisely because of a recognised need for greater coordination in the regulation of digital markets across regimes. The DRCF not only enables its members to take a coherent approach, helping to ensure regulatory burdens are minimised; it also allows them to adopt an agile approach, responding quickly to developments in the fast-moving digital space. For example, AI has been a key focus area for the DRCF, and in the first half of 2024, we will launch the pilot of a 'DRCF AI and Digital Hub', to help innovators develop ideas with regulatory compliance in mind. The success of this model has now been replicated in other jurisdictions.

## **7. Question 7 - Do the UK's regulators have the necessary skills, capabilities and expertise internally to perform the roles they have been given? If they do not, how could this be improved?**

7.1. The regulated sectors represent a substantial part of the economy and of consumer spend. It is therefore critical that the sectoral regulators have the necessary skills, capabilities and expertise to deliver for people, businesses and the UK economy. It is right that parliament and government take an active interest in ensuring regulators are properly resourced and equipped to achieve this.

7.2. In terms of the capabilities of other regulators, our focus is naturally on ensuring our own performance is as strong as it can be (see below our response to Question [9]). It should also be noted that the CMA's regulatory appeals function means we are responsible for reviewing decisions taken by other sectoral regulators. In this context, the CMA's fulfils a quasi-judicial role



which limits the extent to which it would be appropriate for us to comment on the specifics of other regulators' capabilities or performance.

- 7.3. More broadly, however, the CMA works closely with sectoral regulators across a number of areas and can make some general observations regarding the capabilities and expertise we see as critical to success. Many of these reflect the fact that regulators today need to balance maintaining traditional regulatory capabilities with developing new skills to address the challenges and opportunities of a dynamic global landscape.
- 7.4. As digital transformation reshapes industries, regulators across the board need to be proficient in understanding digital technologies, data analytics, cybersecurity, and the implications of emerging technologies like AI and blockchain. The CMA has made considerable investment in these areas and continues to ramp up our proficiency. Other regulators, for example the FCA and Bank of England are similarly making great strides in these areas.
- 7.5. The operating environment for regulators is increasingly complex and turbulent. We believe this requires regulators to make significant investments strategy, horizon scanning and planning and risk management capabilities. The CMA has been developing these areas over the last 12 months and our Strategy function is closely co-ordinated with similar evolving functions across other regulatory agencies, including the ICO, FCA, and OFGEM.
- 7.6. Attracting the best talent is a challenge for the entire public sector and regulators are no exception, particularly in light of the competitive salaries offered within the private sector. As detailed below, we have found the most effective route to recruiting and retaining high calibre individuals (especially those with specialist skills and expertise) is a combination of development opportunities, flexible working, and a strong enunciation of the unique value proposition we offer in terms of the impact and profile of our work.
- 7.7. As noted in response to Question 6, the CMA and regulators regularly second staff to support each other's work in the context of the concurrency arrangements. Secondments also incur in other contexts, for example, between the CMA and government departments and law firms also regularly provide secondees to the CMA's Legal Service. These secondments are an important means of sharing and improving skills, expertise and capabilities.
- 7.8. In terms of the CMA's own skills, capabilities and expertise, we have a strong foundation of legal, economics, and policy specialists and also has a specialist Data, Technology and Analytics Unit made up of data scientists, data engineers, behavioural scientists, technologists, digital forensics specialists and other professionals. Our new leadership is, however, deeply committed to ensuring that CMA capabilities and delivery live up to what is

required of us over the next decade and is investing considerable thought and resource into ensuring that.

7.9. As part of setting a new overarching strategy for the CMA, our 2023 Annual Plan established three Core Enablers to ensure our performance is that of a modern, agile regulator fit for the 21<sup>st</sup> century. They include:

- a. **Adapting our business model:** expanding our use of data and AI; deploying ourselves more flexibly and dynamically; and leveraging a broader ecosystem of external expertise and partners.
- b. **Building and reinforcing critical capabilities:** sustaining excellence in our professions and further developing several key areas, including digital and technology; ex ante remedies; horizon-scanning and engagement and advocacy capabilities.
- c. **Upgrading our employee value proposition:** providing unique opportunities for staff to make a real impact and empowering them to do so; enhancing learning and development opportunities; ensuring a diverse, inclusive, respectful environment; and providing a flexible working environment that adapts to personal goals.

7.10. We have been developing and establishing programmes for each of these over the last eight months. We are confident the cumulative effect of these Enablers (and broader actions we are taking around capabilities, expertise and skills) will be to enhance our performance as an organisation considerably over the long term. For example:

- a. In 2019, we established our Data, Technology and Analytics (DaTA) unit. Today, we have nearly 80 data engineers, data scientists, behavioural scientists, digital forensics and eDiscovery specialists, plus a dedicated Internet Lab.
- b. The CMA has appointed nine Digital Experts as independent advisors to support our ongoing work in digital markets, as well as preparations for the new regime.
- c. Our recently established Microeconomics Unit is collaborating with various academic researchers on specific research projects and more broadly.
- d. Our next phase of digital transformation is well underway to improve effective working and productivity across the organisation. This builds on the successful delivery of both private and public cloud enterprise architectures and services, alongside a secure and modern end user computing strategy, allowing us to streamline processes, improve scalability, and bolster data security. We are now actively evaluating the potential for greater automation, process re-engineering and the ability to exploit new tools and technologies.
- e. We are investing in our ability to identify and monitor macro trends in our external environment over time. We have a new Chief Strategy Officer and are currently recruiting for skilled horizon scanning and foresight

roles to sit within our Strategy team. We also have a growing technology horizon scanning programme, co-led by our DaTA Unit and DMU.

- f. We are enhancing the role of advocacy in the CMA's toolkit, strengthening our senior capability and deploying information and advice more flexibly across our tools. We are also helping government officials across the UK to better consider competition themselves, for example by updating and promoting our competition assessment guidelines for policymakers.
- g. We have built up significant capabilities with respect to digital markets through our existing cases, our work with the Digital Regulators Coordination Forum, and through our preparations for taking on our new Digital Market regime responsibilities. Our economics and legal teams have built up substantial experience and we have around 60 people in the Digital Markets Unit. Overall, we have a phased recruitment plan to build up to a total of around 200 people working across the CMA to implement the Digital Markets regime once the Bill receives Royal Assent.
- h. We are investing in fresh talent through our apprenticeships (including new roles across Data, Business Administration, Commercial and Economics), as well as our improved Delivery Graduate Scheme. We support professional excellence through funding professional memberships, qualifications, and conference attendance, as well as bespoke, strategically aligned learning interventions. The CMA Academy is currently supporting, for example, learning in preparation for our new responsibilities under the DMCC Bill, and applications for the Solicitor's Qualifying Exams and post-graduate courses on Competition and Consumer law.
- i. Our equality, diversity and inclusion strategy 2020 – 2024 includes an action plan encompassing five themes and 64 actions under progression. We are also in the process of setting new diversity targets and creating a new performance accountability framework for our people to ensure these are delivered over the next four years. We monitor diversity through an EDI dashboard and publish our gender and ethnicity pay gap on an annual basis, which is available on gov.uk.

7.11. Our experience to date has shown that we can attract high calibre candidates for roles within the CMA, including the DMU. However, recruiting and retaining individuals with specialist skills and expertise represents a challenge for the CMA (and the public sector as a whole), particularly in light of the competitive salaries offered within the private sector.

7.12. The CMA maximises the currently available pay levers in the Civil Service, for example utilising the Digital Data and Technology Profession allowances scheme and the Paybill Control Pilot HMT scheme. The latter provides flexibility to trade off different elements of the pay-bill, for instance to target increased pay awards for certain parts of the workforce, to address

Recruitment & Retention or workforce transformation needs (for example key staff or specialist staff) or to link pay awards to performance/individual productivity.

- 7.13. Beyond pay, many candidates consider joining the CMA because it offers interesting and impactful work at a world-leading competition authority, with a strong sense of public service and a clear commitment to diversity, flexibility and staff wellbeing, and a strong learning and development offer for all our professions. The programmes covered above intend to maintain and further build on this. We are also targeting individuals - who haven't heard of the CMA or the DMU - through passive advertising, utilising social media and promotion campaigns.

## **8. Question 8 - Who should hold the regulators accountable for their performance against their objectives? What is the appropriate role of Parliament in performing this scrutiny role?**

- 8.1. We are directly accountable to Parliament, reporting regularly to both Parliament and government about our work.
- 8.2. In addition to our direct accountability to Parliament, the CMA also reports regularly to the Treasury, and to the Department for Business and Trade as our sponsor department. This includes mid-year reviews and annual reporting to both departments on our performance. In addition, the CMA's Board, to which CMA staff are internally accountable, are themselves appointed by the Secretary of State for Business and Trade.
- 8.3. We are also accountable to the courts. Parties who are affected by our decisions can appeal or bring a judicial review claim in the courts, including the specialist Competition Appeal Tribunal. This is critical to ensuring that there is effective judicial scrutiny and that our decisions are legally robust.
- 8.4. In terms of public accountability and transparency, key aspects of our work and performance are reported to external stakeholders and the public at large through:
- Our Annual Plan, Annual Report, and Annual Impact Assessment
  - Publication of guidance on how we exercise our powers
  - Publication of individual case and investigation reports
  - Evaluation of specific interventions
  - Wider reviews, such as our State of Competition Report
  - Statutory reporting requirements (such as reporting on the operations of the internal market in the UK or the Subsidy Control Act)
- 8.5. We are, of course, accountable to our Board, with some decisions (for example launching a market study or making a market investigation reference) reserved

for the Board. The CMA Board itself is directly accountable to Parliament for all CMA decisions regardless of whether they are taken by the Board itself or delegated to CMA staff.

- 8.6. We recognise that with greater responsibility comes a commensurate increase in oversight and scrutiny of the CMA and our work. We have embraced the greater interest in our organisation and what we do in recent years, engaging almost weekly with Parliamentary and Select Committees, whether through informal briefings, written updates, responses to specific questions or appearing to give evidence at Committee sessions. We are increasingly proactive at seeking opportunities to advance understanding our organisation and what we do. The Chair of the CMA requested to appear at this Committee in this spirit.

**9. Question 9 - How should the Government and the regulators themselves facilitate appropriate scrutiny and accountability of regulators? Are regulators sufficiently transparent about their own performance?**

- 9.1. The CMA has always been a transparent and accountable organisation. We care deeply about our responsibilities to champion consumers and competition and are constantly considering how we can perform to the highest level for the benefit of those we serve.
- 9.2. An important part of being transparent and accountable stems from building broad understanding of our work. We are mindful that our expanded role and responsibilities increase the need for us to explain in a public and accessible way what we do and the impact that it has for people, businesses and the UK economy. Under our new leadership, we are therefore doing more to proactively listen, learn, communicate and inform than ever before.
- 9.3. As part of this, we have been working throughout 2023 to conduct deeper and more regular engagement not just with Parliament, but with an ever-broadening range of diverse stakeholders across the UK, varying from start-ups to major investors, consumer groups to universities. We have also considered how to be more participatory and inclusive in our approach. For example, we have undertaken a programme of Board meetings outside London, creating a platform to carry out engagement and expose ourselves and the Board directly to stakeholders and issues across the UK (including the devolved nations). We are also developing more open and collaborative ways of engaging with stakeholders and canvassing their views on our work. In the last few months alone, we have hosted hundreds of participants at our offices and online for events on AI, merger reform and sustainability.
- 9.4. Public interest in our work has been steadily rising and the public have a right to hear about and understand what we do. We have therefore made increasing efforts to ensure we are available through the media to explain our work and

our decisions in a clear, accessible way. Our CEO has recently conducted extensive media rounds across print and broadcast media to ensure work with a high degree of public interest, for example around high-profile mergers and the cost of living, is communicated to the public.

- 9.5. As well as stepping up our stakeholder engagement and communications, we have also done more to engage with consumers and businesses on the issues that matter for them, for example through our 'Rip-Off Tip-Off' campaign, and recent publications on competition law and sustainability, and combination therapies. We also have continuous and close engagement with consumer and business organisations such as Which?, Citizens Advice, and the Federation of Small Businesses, as well as playing an active role in the Consumer Protection Partnership.
- 9.6. This more pro-active, open approach to external engagement across the board represents quite a significant evolution for the CMA. We believe it is paying dividends in terms of better understanding and transparency of our work and the value we deliver.
- 9.7. The CMA is currently preparing for our new responsibilities for the digital markets regime under the DMCC Bill. Effective accountability, including constructive, pro-active dialogue with a broad range of stakeholders, will become even more critical. Our approach will no doubt develop over time. But we are confident that we have the right building blocks in place to regulate digital markets proportionately and effectively.
- 9.8. The regime includes several important additional accountability mechanisms, including (as specified in the Bill) the fact that most of the key decisions will be taken by the CMA Board or a Board committee. We will be including a standalone Digital Markets section in the CMA's Annual Report going forward to report our progress against a range of indicators, further supporting the ability of Parliament and Government to hold us to account.
- 9.9. In terms of transparency over how we prioritise our work, as described above we have published 'Prioritisation Principles', which help guide the choice of work where the CMA has discretion to act (noting that a considerable proportion of our work, including around mergers, is non-discretionary).
- 9.10. In the context of accountability for how we prioritise our work, it should be noted that consumer bodies can also make a 'super-complaint' to the CMA, if they are concerned about market features significantly harming consumer interests. Within 90 days of receiving a super-complaint, we are required by law to respond, setting out what we propose to do.

## **10. Question 10 - What mechanisms and metrics could be used to hold regulators accountable on a regular and ongoing basis and to judge whether a regulator is performing well?**

- 10.1. As a public body funded by the taxpayer, it is important that we not only show how we are delivering on the mandate entrusted to us by Parliament. We also need to demonstrate that we are delivering real impact and value. As part of this, we regularly evaluate and communicate our performance and the impact of our work through our Annual Impact Assessment, Annual Plan and Annual Report and Accounts.
- 10.2. Our Annual Impact Assessment sets out the direct monetised benefit to consumers of our work over a three-year rolling period, in response to a requirement set by the UK Government. This demonstrates that the CMA consistently delivers strong value for money across the range of our functions: over £20 for every £1 of taxpayer money spent, well in excess of the target of £10:1 set by government.
- 10.3. Although this calculation gives a tangible sense of the impact the CMA is having, it has a number of limitations. Most importantly, our Impact Assessment only takes account of direct financial benefits where it is practicable to measure or estimate them. It does not take account of the impact of cases where the CMA's intervention is likely to generate considerable benefits, but these benefits are difficult to quantify in a sufficiently robust manner (for example, our work on compliance or regulatory appeals).
- 10.4. Nor does the calculation include potentially very significant indirect benefit from, for example, deterrence of anti-competitive behaviour. As such, it only provides a partial view of the benefits the CMA is delivering for people, businesses and the UK economy, which in reality are likely to be more substantial than those reported.
- 10.5. Going forward, we propose to complement our Annual Impact Assessment with a fuller picture of our impact. This might include drawing from observable, measurable outcomes in areas where the CMA has acted (our case work, market studies and investigations, external engagement activities, for example); indicators of how stakeholders view us and our work (surveys and other research data); and broader, long-term and market-wide outcomes (through, for example, our State of Competition Report). Not all of this is directly quantifiable. Nonetheless, we think it will contribute to a clearer understanding of our work and the positive external outcomes the CMA is delivering.
- 10.6. In terms of performance more broadly, our new leadership is deeply committed to ensuring our capabilities and delivery live up to what is required of us now and in the future. Our new strategic approach (through our 2023 Annual Plan) was intended to establish a solid base on which to deliver the next decade of

value for those we serve. We have steadily integrated the tenets of that strategy across the organisation over the last year and this is already paying dividends in terms of enhancing our performance and the impact we bring.

- 10.7. This has included a significant institutional investment made this year in prioritisation, planning, co-ordination, and horizon scanning, to ensure we are well-placed to respond to the increased volume, complexity, and public profile of our work. For example, our new Resourcing, Pipeline and Planning Committee (supported by a Pipeline Co-ordination and Insights team) has, over the last 12 months significantly enhanced the clarity and consistency of decision-making across the CMA. It has also ensured that our prioritisation principles, as well as the strategy and priorities we develop in consultation with stakeholders, are truly integrated into our decision-making processes.
- 10.8. Similarly, the data-driven insights around resource allocations and generated by our Project Management Office, which are shared regularly with senior decision makers. This regular monitoring and reporting helps ensure we are deploying our workforce effectively and flexibly to meet demands and to deliver positive outcomes with maximum impact
- 10.9. We are also investing in our ability to identify and monitor macro trends in our external environment over time. This will help us to better anticipate and respond when required. We have appointed our first Chief Strategy Officer and are currently recruiting for skilled horizon scanning and foresight roles to sit within our Strategy team. We also have a technology horizon scanning programme, co-led by our DaTA Unit and DMU.
- 10.10. These strategic functions are designed to work together to significantly improve the delivery and impact of our work. We believe the outcome will be a considerable advancement in the overall performance of the organisation.
- 10.11. In terms of skills, expertise and broader capabilities, our 2023 Annual Plan also established three Core Enablers which have been developing and establishing as programmes over the last eight months. We are confident the cumulative effect of these Enablers will be to enhance organisation considerably over the long term.