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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
COMPETITION COMMITTEE**

**Working Party No. 2 on Competition and Regulation**

**Assessing and Communicating the Benefits of Competition Interventions – Note by the  
United Kingdom**

12 June 2023

This document reproduces a written contribution from the United Kingdom submitted for Item 6 of the 75th meeting of Working Party 2 on 12 June 2023.

More documents related to this discussion can be found at  
<https://www.oecd.org/competition/assessing-and-communicating-the-benefits-of-competition-interventions.htm>

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## *United Kingdom*

### 1. Evaluation

#### 1.1. CMA Annual Impact Assessment framework

1. As part of the framework agreement<sup>1</sup> between the Competition and Markets Authority (CMA) and the UK's Department for Business and Trade, the CMA is required to report annually on:

- 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
- the ratio of direct financial benefits to consumers and costs for its principal tools.

#### 1.2. Impact Assessment methodology

2. The assessment is undertaken by the CMA itself and is reviewed by an external expert. The methodology used by the CMA is based on that developed and used by the CMA's predecessor organisations, the Office of Fair Trading (OFT) and the Competition Commission (CC),<sup>2</sup> validated by successive independent academic reviewers and consistent with approaches now regarded by the OECD as international good practice.<sup>3</sup>

3. 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.<sup>4</sup> For example, for market studies and investigations our impact estimates are based on 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.

4. The impact estimates focus on the direct financial benefits to consumers of the CMA's work completed over the past three financial years. We average the total benefits over three years to reduce yearly fluctuations in the impact estimates due to uneven caseload<sup>5</sup> 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.

5. We present estimates of the impact of our work for each of the following areas:

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

<sup>2</sup> OFT (July 2010), [Guide to the OFT's impact estimation methods](#).

<sup>3</sup> OECD (April 2014), [Guide for assessing the impact of competition authorities' activities](#).

<sup>4</sup> In rare circumstances we have used ex-post information to improve our impact assessments.

<sup>5</sup> 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 **Error! Reference source not found.**

- Competition law enforcement
  - Consumer protection enforcement
  - Merger control
  - Market studies and market investigation references (collectively referred to as 'markets work' in this document)
6. 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.
7. For confidentiality reasons, we do not publish impact estimations for individual cases and projects. However, our estimates are independently reviewed by an external expert to ensure that our benefit estimates are reasonable and robust.
8. 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.<sup>6</sup>
9. 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:
- The size of the affected turnover.
  - 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).
  - The length of time the detriment (eg higher prices) would have prevailed absent the intervention.
10. 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. 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%).<sup>7</sup>
11. 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

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<sup>6</sup> 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.

<sup>7</sup> See HM Treasury, [The Green Book: Appraisal and Evaluation in Central Government](#).

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

12. 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.

13. 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.

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.

### 1.3. Consideration of indirect effects

15. Our estimates exclude the impact of a number of cases where the CMA's intervention is likely to generate considerable consumer benefits where benefits are difficult to quantify in a sufficiently robust manner. The estimate of benefits excludes the CMA's compliance work,<sup>8</sup> international activities,<sup>9</sup> and regulatory appeals.<sup>10</sup> In the latter case this is because the CMA's role is an appellate one rather than being the primary regulator.<sup>11</sup> The benefits from our advocacy to government are also excluded.<sup>12</sup>

16. 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

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<sup>8</sup> For example, engaging with small and medium enterprises, their trade associations and intermediary advisors in England and the Devolved Nations.

<sup>9</sup> For example, engaging with international networks and organisations.

<sup>10</sup> For example, the 2020/21 appeal of the [Ofwat PR19 Price Determinations](#).

<sup>11</sup> 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.

<sup>12</sup> This includes advice, support and recommendations to government to help promote competition and consumer interests in the policymaking process.

mergers or of anti-competitive conduct. Evidence from existing academic studies,<sup>13</sup> previous OFT research,<sup>14</sup> and an ex-post evaluation conducted in 2018,<sup>15</sup> 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.

17. 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.<sup>16</sup> 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.

#### 1.4. Ex-post evaluation

18. 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 effects of past interventions, drawing lessons and implications to inform future decision making at the CMA.<sup>17</sup>

19. 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.

20. 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.<sup>18</sup> E.CA Economics evaluated the CMA's assessment of vertical theories of harm in four merger clearance decisions.<sup>19</sup> 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 consultancy DotEcon and published in 2018.<sup>20</sup> This review estimated the change in behaviour and competition

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<sup>13</sup> As collated in the CMA's 2017 literature review, [The deterrence effect of competition authorities' work – literature review](#).

<sup>14</sup> See [The impact of competition interventions on compliance and deterrence, OFT1391](#) and [The deterrent effect of competition enforcement, OFT 962](#).

<sup>15</sup> DotEcon (2018), [Evaluation of direct impact and deterrent effect of CA98 cases](#).

<sup>16</sup> CMA (2015), [Productivity and competition: a summary of the evidence](#).

<sup>17</sup> See examples in paragraph 192.

<sup>18</sup> E.CA Economics (April 2022), [Ex-post evaluation of vertical mergers](#).

<sup>19</sup> Tulip/Easey, Heineken/Punch, Mastercard/Vocalink, and Tesco/Booker.

<sup>20</sup> 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

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. Communication

21. The CMA's approach to communicating the benefits of competition and the impact of the CMA's work is driven through institutional transparency and targeted amplification of the messages and findings from our casework. All of the CMA's external communications is delivered through a single directorate to ensure every opportunity is taken to explain the CMA's work regardless of the technical complexity of our casework.

### 2.1. Stakeholder engagement and campaign work

22. At the CMA we engage with a variety of external stakeholders reflecting the breadth of cases we take across different sectors and industries. Parallel to sector specific groups we engage with national and regional business representative associations, drawing out lessons learnt from competition law enforcement cases and the risky business behaviours to avoid.

23. All the external communication strategies we develop are grounded in the UK [Government Communication Service guide to campaign planning](#) in line with the following OASIS structure where, at the start of a campaign, we define the **Objective, Audience, Strategy, Implementation and Scoring** to steer communication plans and delivery. Increasing awareness of and compliance with competition law is a recurring objective in all our competition law communication campaigns.

24. In all our communication and outreach we are mindful to employ language that is easy to understand (avoiding legal/ technical language). Businesses are time poor – it is essential that content is concise, impactful, easy to understand and share. We have a variety of content on our [Cheating or Competing campaign page](#) including quick guides, short case studies, animated explainer films and an interactive competition law quiz to test business understanding of competition rules and risk.

25. In addition to communicating with business stakeholders we also engage with potential victims of anti-competitive activity such as public sector procurers. We deliver teach-in presentations with public sector procurement teams across central and local government – this is supplemented by [a dedicated page for public sector procurers](#) on our Cheating or Competing campaign page that features a free e-learning module on bid-rigging risk – how to spot, deter and report it, alongside a quick guide on bid-rigging dangers.

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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.

## 2.2. Transparency

26. Transparency is important in all our communications:
- We publish both an Annual Plan and an Annual Report which set out our respectively our priorities and what the CMA has delivered. Our Annual Plan is published in draft and is informed by extensive stakeholder outreach including an open consultation and stakeholder roundtables and bilateral meetings. Our Annual Plan sets out the work of the organisation and how we have used our resources and is put before the four legislatures of the United Kingdom. The CMA is subject to making appearances in front of parliamentary committees to explain its work.
  - We publish the non-confidential versions of enforcement decisions and in addition to this we create short case study versions that draw out the key lessons learnt from our decisions to promote compliance among wider industry.
  - Sanctions and personal consequences/ director level accountability are key messages to draw out in case study versions and press releases that detail decisions – we often lead with the size of a fine in a press release/ case study headline. However alongside drawing out the serious consequences for those caught out for wrongdoing we also point to compliance advice available to help businesses stay on the right side of the law and to draw out the benefits of reporting and leniency.
  - We regularly track awareness of competition law among businesses/ SMEs via a business tracker survey - we also engage with stakeholder partners to poll levels of awareness among members after an enforcement decision has been announced and associated compliance advice has been communicated.

## 2.3. Communication tools

27. The communication tools we chose to use very much depend on our target audience and who we want to reach – overall the rule of thumb is to tailor our communication to our target audience – working through trusted partners such as consumer groups and business organisations and harnessing the media and channels that our audience consume information such as sector specific trade press, national media, targeted and paid for social media and arranging speaking engagements with trade associations/ partners to speak to business groups/ their advisers directly.

28. Our communication strategy has evolved with new media techniques at our disposal – we have a bigger social media, web and digital team which means we have a bigger presence on social media channels with innovative content regularly created and shared - this is reflected in the increased number of followers we have secured across all our social channels including Twitter, LinkedIn, Instagram and Facebook. We have used selective partnerships with celebrities and social media influencers to further extend the CMA's reach through content which it might not otherwise be able to deliver as a government body.

29. In line with the CMA's expansion in our offices in the devolved nations as well as in the English Regions – with new offices in Manchester and Darlington and much enlarged offices in Belfast, Cardiff and Edinburgh we are actively seeking to increase our profile across the whole of the United Kingdom.