



Law Society  
of Scotland

# Consultation Response

Competition and Markets Authority annual plan 2019  
to 2020

January 2019



## Introduction

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The Law Society of Scotland is the professional body for over 11,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

The Society's Competition Law Sub-committee, together with the Consumer Law Sub-committee welcomes the opportunity to consider and respond to the consultation on the *Competition and Markets Authority annual plan 2019 to 2020*.<sup>1</sup> The Sub-committee has the following comments to put forward for consideration.

## Response

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### Draft priorities

Overall, we welcome the draft priorities set out in the consultation document and support the themes which will be used to select and conduct casework.

### Resourcing in event of “no deal” withdrawal from the EU

We are concerned by the anticipated impact on the CMA if the UK leaves the EU without an agreement and therefore with no transition period until December 2020. We recognise the CMA's statutory duty to investigate qualifying mergers and state aid cases and it is right that these obligations are met as a matter of urgency. Nevertheless, the implication that the CMA might not have sufficient resources to continue effective enforcement action against cartels and other important tasks such as market investigations is

<sup>1</sup><https://www.gov.uk/government/consultations/competition-and-markets-authority-annual-plan-2018-to-2019>

deeply concerning and potentially sends conflicting messages.<sup>2</sup> Without sustained enforcement, the UK will be unable to position itself as global leader in this area.

We appreciate that the earlier transfer of responsibilities will generate costs and that recruitment by the end of March is not feasible, given the short timescale. However, we consider that the annual plan should indicate how the CMA intends to ensure that its resourcing requirements are met - even if this is at a point later in the year - and the intended timescales for doing so. A full staff complement is essential to ensure continued levels of service across all its existing functions and the new responsibilities, which it is set to take on as a consequence of EU withdrawal. If further funding is required, we could call upon the Government to provide the necessary resources.

### **SME enforcement**

At 2.9 the CMA recognises the importance of ensuring that cases are brought in smaller markets and those served by SMEs but also acknowledges that there is lower level of awareness of competition and consumer law in this group. We support this objective but consider that it would be helpful for the CMA to provide reassurance that the starting point will be guidance and education to assist these businesses in complying with their obligations. There is also a danger that specifically targeting SMEs could be seen as focussing on those parts of the economy least able to defend themselves in proceedings (be it for financial reasons or dedication of management time). . In addition, many SMEs are likely to be impacted by EU withdrawal and will already be contending with the need to adapt their business accordingly, particularly in the event of a “no deal” and resulting lack of a transition period.

### **Innovation and technology**

At 2.43 we agree that innovation is often beneficial to market competition, driving growth and benefiting consumers. At the same time, we welcome the clear statement that disruptors should not themselves be able to take advantage of loopholes where the system is designed to regulate traditional businesses. We anticipate that other jurisdictions will take a bold stance on this issue and consider that the CMA should be similarly robust. We believe that it is possible to create a system which promotes innovation in a fair way and would be keen to hear more about how the CMA will seek to deliver this outcome.

Furthermore, we welcome the recognition of the importance of fully exploring competition and consumer protection issues around Big Data (see 3.12).

<sup>2</sup> See CMA Annual Plan consultation 2019/20 introduction at page 2 and paragraph 2.7

## International engagement<sup>3</sup>

In the context of EU withdrawal, we agree that the CMA should work to strengthen its international profile; increased participation in forums such as the International Competition Network and the International Consumer Protection and Enforcement network is an important part of this.

At the same time, we consider that the CMA should seek to remain part of the European Competition Network if possible, even if as an affiliate or observer member, as a means to maintain relationships, coordination and intelligence sharing with our closest neighbours.

Furthermore, with reference to the resourcing implications referred to above, it is important to note that opportunities for international leadership also rely on a positive track record of bringing relevant and important enforcement action.

## Decentralised offices

We welcome the CMA's opening and expansion of offices outside of London. Last year we welcomed the plan to create a full-service office in Edinburgh. This has been a very positive development. We have appreciated the opportunity to engage with representatives over the course of the initial operating year and look forward to continuing our engagement in the future.

More generally, we welcome the approach the CMA has taken in creating an office with team members here integrated with those in London. The office is growing and is engaging with the wider community here, which we consider is helpful in raising awareness of competition and consumer law issues and the CMA itself and combating potential negative perceptions of the CMA as a London-centric regulator.

### **For further information, please contact:**

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<sup>3</sup> See in particular paragraphs 2.19 and 3.9