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Dear Chris,

PRACTITIONER PANEL COMMENTS ON THE FCA APPROACH TO COMPETITION

We welcome the opportunity to respond to the FCA's articulation of its approach to competition. A consistent finding from our survey of regulated firms, and other surveys, is that the FCA's competition objective is less well understood than its other objectives, and we welcome the FCA's efforts to explain how it intends to focus on preventing the associated harm. We consider this document moves the understanding of the FCA's approach forward significantly.

We have responded to the specific questions in the attached document, but would also make a more general point about regulating competition in financial services. The Panel's view is that just at the time when the FCA is focusing more on its competition objective, there is a seismic change occurring in the financial services industry and other sectors with which it interacts, and we would like to see this more explicitly addressed in the Approach to Competition.

In summary, we perceive the question competition regulators have focussed on over the last ten years is 'how do we ensure major firms compete in a way that enables choice (switching) and value for consumers?' We believe that the most important question over the next ten years will be something like 'how do we ensure that the disruption caused by new technologies and firms creates competition in the interests of consumers?'. We raise this because we can see a number of areas where innovation creates great scope for improved outcomes, but also considerable harm. More concerningly, a number of sources of potential harm fall outside the current regulatory perimeter or may fall out of other unrelated changes.

We have a number of examples of new challenges:

- Firms are increasingly driven to use cloud storage for their operations and the limited range of providers for regulated businesses is both a security and competition issue - some of these new major cloud providers also compete with incumbent FS firms, thus creating conflicts.
- The existing paradigm for the banking industry has been for many years that the sector is dominated by a small number of large firms between which consumers were not willing or able to switch. An approach which focuses on this aspect will miss the real and recent changes in the industry which alter the competition landscape, such as the introduction of Open Banking. For example, new aggregation and immediate sweeping capabilities may threaten the core 'maturity transformation model' which underpins the very existence of mortgage lending ('borrow short, lend long')
- The introduction of ringfencing is likely to result in an inflow of liquidity to the UK market, which may affect the ability of smaller banking and building societies' businesses to compete. Ringfencing is a well-motivated major intervention, but there will likely be at least some unintended outcomes.
- The broader use of ever more publicly available data that the digital world affords us, as well as the use of big data, will lead to the disaggregation of risk pooling and heightened potential for propensity based pricing.

- Cross border operating models in a post Brexit environment where firms passporting into UK and not necessarily subject to uniform levels of regulation have the potential to deliver both poor outcomes for customers and undermine the construct of a level playing field in a highly competitive market.
- With Brexit, Ringfencing and Open Banking all landing on similar timing, we urge the FCA to take a forward-looking view of the likely shifts in market structures and potential harm to customers – rather than simply reflecting a particular snapshot in time, or looking at history. It also needs actively to take into account in its approach to competition issues relating to operators outside the regulatory perimeter which have an impact on regulated firms and to consider alternative business models and alternative metrics to measure them. This affects both the FCA's approach to competition, and the Retail Banking work.

We look forward to working further with the FCA in this area.

Kind regards,

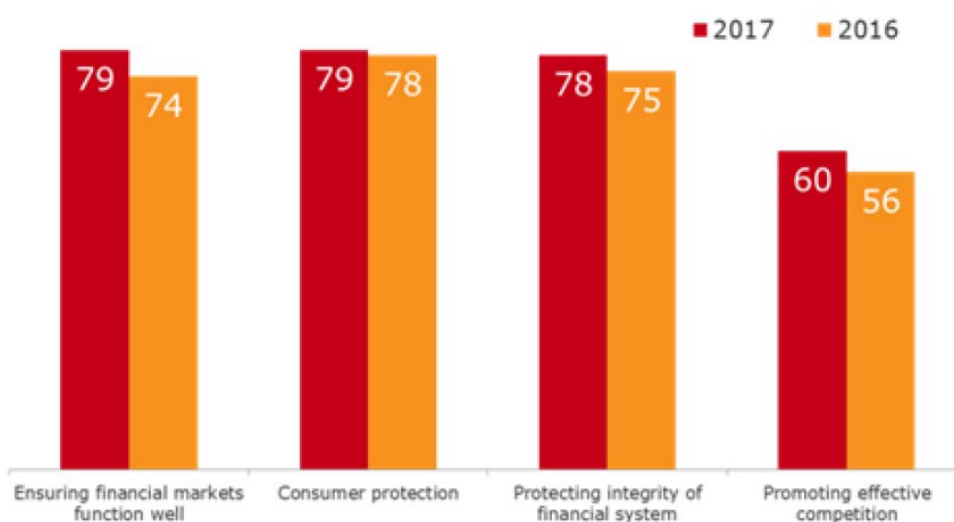
ANNE RICHARDS
Chair, FCA Practitioner Panel

Draft Practitioner Panel response – Approach to competition¹

Q1. Do you have a clear understanding of the FCA's statutory remit, competition powers and aims in advancing its competition objective? If no, what more could we do to explain our competition remit and powers?

We support the FCA's Approach to Competition and believe the publication of this document is a positive step forward in helping the industry understand the FCA's remit in this area. The Panel (and now joint FCA/Panel) Survey of regulated firms has consistently shown that the industry has less understanding of the FCA's competition objective. For the last two years the survey has shown that around 20% fewer firms are confident that the FCA will achieve this, compared to its other objectives. The survey work has suggested that a significant element of the lower score is a lack of understanding by the industry of what the FCA's competition objective represents, so with the 2018 survey currently out in the field at the same time as the Approach to Competition consultation is underway we would expect to see this figure improve.

Figure 3.4 – Level of confidence in the FCA's performance against objectives
(% very/ fairly confident)



Base: All firms 2017 (2,080); 2016 (3,357)

Source: FCA/Panel Survey of regulated firms 2017

Specifically relating to the Approach to Competition document, we found the decision-making framework chart from the FCA Mission particularly useful, and thought that should be featured more prominently and used in further work.

Competition vs competitiveness

We believe one of the reasons for the competition objective being less well understood is that there remains some confusion about the difference between competition and competitiveness and the FCA's role. We understand the FCA does not have an explicit remit to promote the UK's or an individual firm's competitiveness in global financial markets, but are pleased to see it acknowledges that effective competition that increases efficiency and productivity is likely to make the UK an attractive proposition internationally. We would like to see a more detailed

¹ <https://www.fca.org.uk/publication/corporate/our-approach-competition.pdf>

explanation of the FCA's role in this area, covering what this role is and also what it is not. This would, we believe, increase understanding significantly.

Anti-competitive behaviour

We would like to see a more detailed explanation of diagnosis, checks and balances in identifying anti-competitive behaviour, given that some remedies can be significant and severe and have a broader impact than just individual firms. We appreciate that there are procedural guidance and competition law requirements in this area, and it would be helpful to further articulate the different ways in which the FCA is empowered to intervene.

Q2. Are there other indicators of potential harm that we should consider in our preliminary assessments of competition?

We suggest the FCA should be considering metrics for evaluating non-traditional business models, as well as metrics such as return on equity traditionally considered by competition regulators. In the case of new start-ups, for example, firms can be willing to bear substantial losses in the early stages in order to build market share. Although this is not necessarily an indicator of harm, it should be tracked in order to gain a full picture of evolving markets. Monitoring competitive business dynamics also involves looking at company failures as well as thriving companies in order to evaluate the full picture of the competitive health of the market, especially in the context of market disruption.

A further possible indicator of harm is firms which evolve within the financial services value chain but outwith the scope of regulation. Although such firms are by definition outside the FCA's remit, it should be aware of such activity in order to avoid potential harm from lack of consumer protection.

Q3. Are there other tools we could consider when designing remedy packages?

We do not have any comments on additional tools, but would like to see a more detailed explanation of the remedies already available to the FCA. This would include further clarification of what the FCA sees as the pros and cons of different remedy approaches and the processes it undertakes when it chooses one remedy rather than another.

The Approach document notes that the FCA's work is not just about lower prices or more switching, which is welcome. We note that in the past the industry's experience has been that market studies such as the Asset Management Market Study or Retirement Outcomes Review have tended to focus on those two points either through additional governance or additional disclosure. There remains doubt as to whether these governance and disclosure measures will genuinely result in improved competition for consumers or whether they simply lead to increased costs for market participants which are ultimately borne by the consumer.

Q4. Has this document set out the FCA's approach to competition clearly? Are there other issues relating to our approach to competition that could benefit from further clarification?

Theories of harm

The FCA could be more transparent in its explanation of theories of harm in the early stages of competition investigations. Unexplained theories of harm, especially during the data collection process, can be a source of concern to the industry, and prompt 'noise' which takes up unnecessary resource. A clearer indication of why the FCA is seeking information, or an explanation of why it cannot give further detail, would lead to better and more efficient data collection processes.

Innovation

We note that the Approach to Competition states that an important aspect of the FCA's work is 'supporting new and innovative players whose business models may test the boundaries of our current regulations'. Elsewhere in the document, it is stated that the FCA's role is in 'keeping markets open to entry and innovation'. We consider this latter wording is closer to an accurate description of the FCAs' role, which should be to keep the financial services industry open to everyone by removing barriers to entry and exit, and ensuring that those firms which are a part of the industry are all held to the same standards.

Switching

We are encouraged to see that remedies are not focused mainly on switching, as for many products switching may not be in the customer's best interest. We understand that measuring the number of switches is an important metric, but would like to see more thought on setting out the advantages and disadvantages of switching for different product types, as well as a focus on the fair treatment of long-standing customers.

End