

# **FCA Mission:** Approach to Competition

October 2018

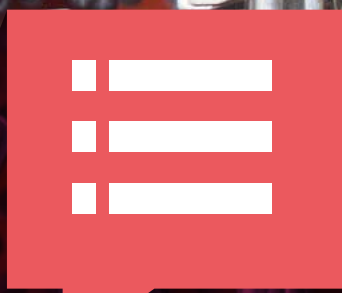
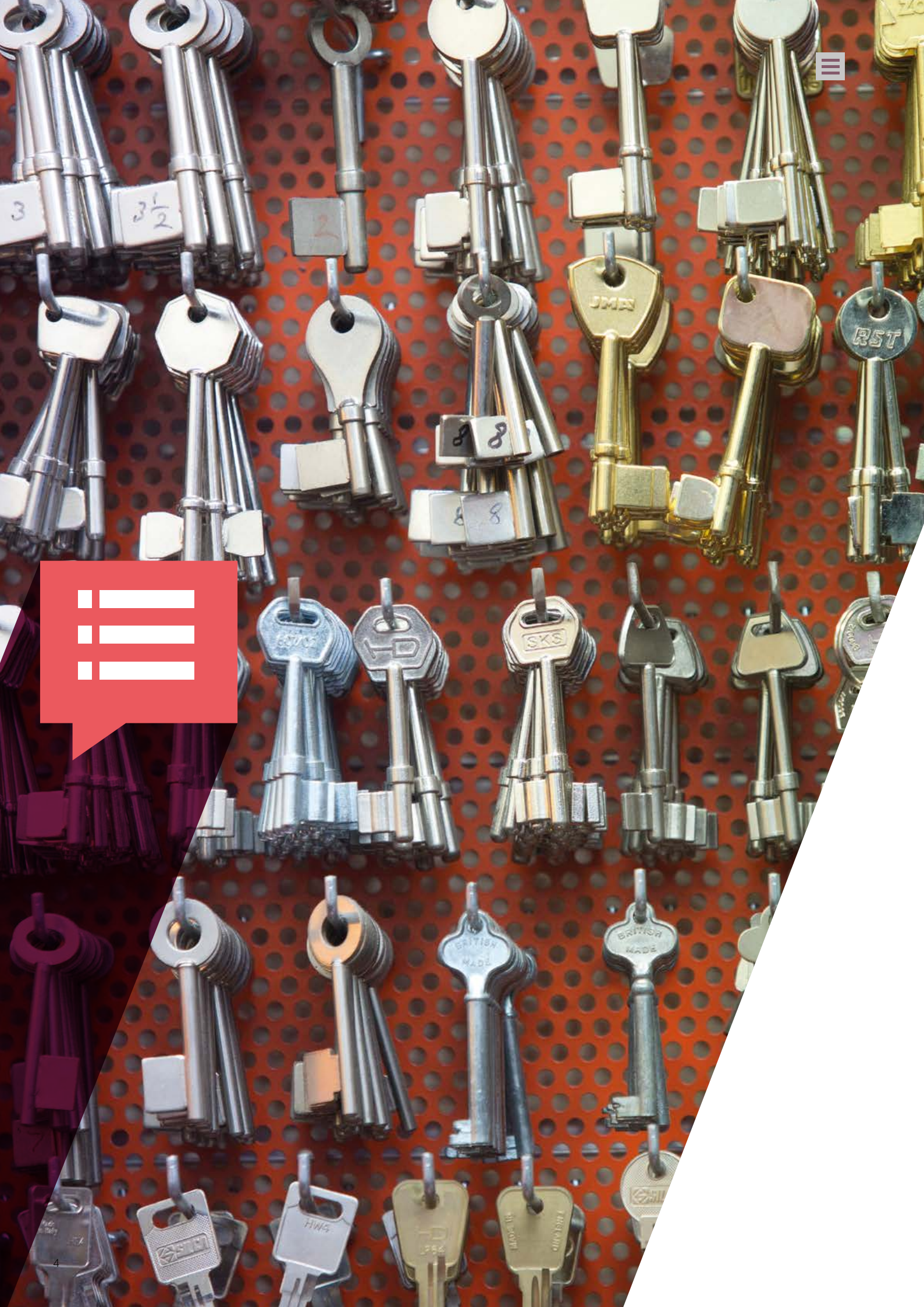




# FCA Mission: Approach to Competition

## Contents

	Introduction	5
1	Our role	8
2	Our decision-making framework	11
	Identifying potential harm	12
	Diagnosing the cause of harm	14
	Remedies	17
	Measuring our impact	21
	<b>Annex 1:</b> Market studies, calls for input and other competition reviews launched by the FCA	22
	<b>Annex 2:</b> Feedback Statement for Approach to Competition consultation	23



## Introduction

Every day the UK population relies on a range of financial services, from basic bank accounts to car loans, mortgages, pensions and complex investment products.

Consumers need to have confidence in these services and the firms that provide them. They expect the market to be fair, open and competitive. They also have high expectations of those who regulate these firms.

Parliament created the FCA to regulate the conduct of the UK's financial services. The FCA is also the prudential regulator for all firms apart from banks, building societies, credit unions, insurers and large investment firms. These are authorised by the Prudential Regulation Authority (PRA) and regulated by both the PRA and the FCA.

Parliament gave the FCA a single strategic objective – to ensure that relevant markets function well – and three operational objectives to advance. These are:

- the consumer protection objective – securing an appropriate degree of protection for consumers
- the integrity objective – protecting and enhancing the integrity of the UK financial system
- the competition objective – promoting effective competition in the interests of consumers in particular markets<sup>1</sup>

As we say in 'Our Mission', the aim of our regulation is to serve the public interest by improving the way the UK financial system works and how firms conduct their business. By doing this, it benefits individuals, businesses, the economy and so the public as a whole.

In 'Our Mission', we also say that we add public value by: enhancing trust in markets, improving how they operate, delivering benefits through a common approach to regulation, working to prevent harm from occurring and helping to put things right when they go wrong.

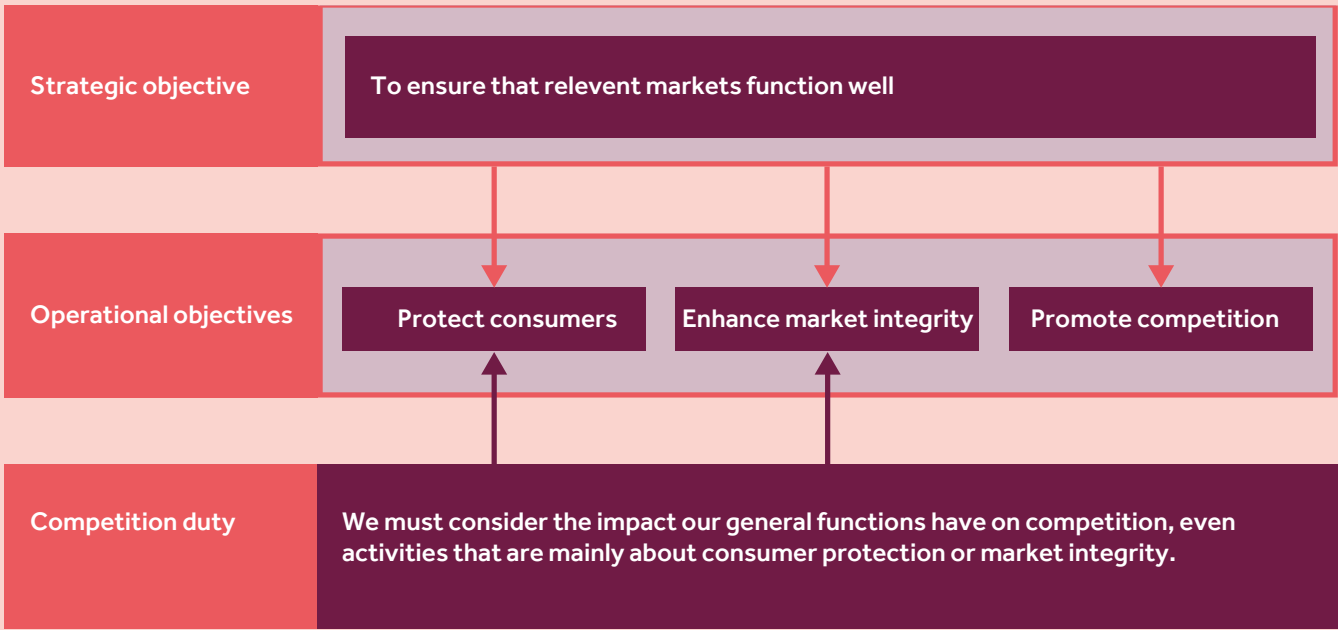
To deliver our objectives, Parliament gave us a range of tools, and independent powers to make decisions about how best to use them.

In addition to our competition objective, we also have a competition duty, which states that we must, so far as is compatible with acting in a way which advances the consumer protection objective or the integrity objective, discharge our general functions in a way which promotes effective competition in the interests of consumers. As a matter of policy we normally choose the most pro-competitive measure open to us provided that it is compatible with our duties as a whole. Our competition duty means that competition is an integral part of our

<sup>1</sup> We promote effective competition in the interests of consumers in the markets for regulated financial markets and markets for services provided by recognised investment exchanges



# Our objectives and competition duty



thinking. This ensures that we:

- consider the impact on competition when we discharge our general functions to pursue the consumer protection or integrity objectives.
- actively investigate markets through market studies and reviews to ensure that competitive processes are working well for consumers, and
- support new entry and innovation within a controlled environment to ensure an appropriate level of consumer protection.

The Treasury also has powers to make recommendations to the FCA about aspects of the Government's economic policy which we should have regard to when considering how we advance our strategic and operational objectives and how we discharge our competition duty.

Our objective is to promote competition in the interests of consumers, not for its own sake. We know that, in some circumstances, increasing competitive pressure in already poorly performing markets can make matters worse. We know also that strengthening competition is not an easy process. Experience

in the retail banking sector, for example, has shown this requires a comprehensive approach and persistent effort.

While our Competition and Economics Division spearheads much of the FCA's competition work, this document covers the work we do across our organisation to promote effective competition.

From investment banking to cash savings, our work across both wholesale and retail markets keeps markets open and innovative, and helps consumers understand and buy the right products and services for them.

### What is competition?

Competition is a process of rivalry between suppliers. To survive and grow, firms must compete on a range of factors to attract and keep customers. When competition works well, it drives down costs and prices, drives up service standards and quality and increases access to financial services. It also drives innovation, productivity and economic growth. Weak or poorly-functioning competition in

financial services can cause harm to consumers, firms and the wider economy.

Effective competition also means that markets are open to new firms which can offer better deals and products, while firms that can't keep up either have to change or go out of business.

Competition is a vital engine of economic growth. By regulating to support competitive markets, our work both adds value to the economy as a whole and helps individual consumers. Our goal is to ensure the UK's financial markets are effective at delivering benefits to consumers and can be trusted by both consumers and businesses.

While we do not have a remit to promote the competitiveness of any UK or individual firms in global markets, effective competition that increases efficiency and productivity is likely to make UK financial markets and firms an attractive proposition internationally.



**Our objective is to promote competition in the interests of consumers, not for its own sake.**



# Chapter 1

## Our role

We do three things to advance our competition objective. We look at market structure and dynamics through our market studies, adjusting the 'rules of the game' where necessary to improve consumer outcomes. We investigate anti-competitive behaviour under the Competition Act 1998 (CA98) and EU law. And we implement regulation with the aim of supporting, rather than inhibiting, competition in consumers' interests.

Our competition work is not just about lower prices or more switching. One aspect is clearly about supporting consumer choice, including the choice to move from an unsatisfactory supplier to a better one. Importantly, this applies pressure on firms who know that their customers could move easily if their products and services are not good enough. But our work is also about keeping markets open to entry and innovation, tackling anti-competitive conduct and intervening to ensure competitive forces drive good outcomes for consumers. It can also be about protecting consumers when markets fail them.

As a competition regulator our primary role is not to regulate prices or profitability directly. In most instances we look to remedy the underlying market failures or root causes of harm. However, there may be times when we need to intervene directly to protect consumers, such as on product standards or, more rarely, on price.

Our regulatory remit covers thousands of products whose prices are rightly determined by market forces and require no regulatory action. However, there may be some situations where we need to intervene on a specific aspect of

price such as an exit fee or surcharge.

More rarely still, we may intervene on overall price. We typically do this in response to acute concerns about the lack of competitive pressure, as we did for default pension scheme charges under auto-enrolment. When we intervene on price, we consider firms' costs and what they need to make a reasonable return. Our role, even when applying a price control, is not to regulate the returns a firm makes. However, we often look at pricing and profitability as important evidence in our market studies, to help us understand market dynamics.

### Supporting innovation

An important aspect of our work to promote competition is working with new and innovative players whose business models may test the boundaries of our current regulations. It is vital that we understand how and when regulation can inhibit new entry and innovation, so that our regulation evolves with financial services rather than holding them back. We do this largely through our Innovate programme, the Regulatory Sandbox, our RegTech work, the Advice Unit and the New Bank Start-





up Unit. We describe these initiatives in more detail in '[Our Approach to Authorisation](#)' document.

### Striking the right balance across our objectives

Consumers need to be able to trust that markets will work well for them. Knowing that firms are well regulated means they can make confident choices about the products they buy. In turn, consumers' choices motivate firms to compete effectively, innovate and grow.

However, regulation that protects consumers, safeguards market integrity and promotes financial stability can stifle competition by raising barriers to entry or limiting innovation. For example, requirements to hold minimum levels of capital make it harder for new firms to enter the market. Our actions need to strike a balance between encouraging competition and innovation and advancing our other operational objectives of consumer protection and market integrity.

The FCA is one of several regulators collectively tasked with managing the balance between competition and financial stability. The PRA and the Bank of England lead on financial stability issues, and the PRA also has a secondary competition objective – 'to act, so far as reasonably possible, in a way that facilitates effective competition in the markets for services provided by PRA-authorized firms in carrying on regulated activities.'

Often we can take steps to improve competition without affecting consumer protection, market integrity or financial stability – as with our work on Innovate and the New Bank Start-up Unit (described below). But at other times we must strike a balance between allowing new firms to enter and innovate, and preventing harm – as with our work on crowdfunding and peer-to-peer lending.

### What does good look like?

Below we set out what a well-functioning market looks like, where we can see competition working in the interests of consumers at all levels of the supply chain. If there is weak competition at any level, it is typically the consumer that ends up paying as firms pass on higher costs. This links with the conditions we want to see when consumers are protected and there is strong market integrity, as set out in our [other Approach documents](#).

In all markets, we want consumers to be able to buy the products and services they need, sold in a way that is clear, fair and not misleading. We also want good value products and services that meet consumers' needs.

In addition, where competition is working well, we will particularly see:

- Confident consumers able to exercise choice. This requires consumers to have access to the information and professional support they need, and requires firms to present choices in a way that does not unfairly exploit behavioural biases.
- Firms winning business by making the best offer to consumers and delivering it, not by colluding with each other or excluding rivals.
- Firms that can enter and grow without facing undue barriers or costs.
- Firms that have the freedom and flexibility to develop new products and services and a regulatory framework that adapts to keep pace with change.
- Firms treating customers fairly, knowing that unfair treatment will have both commercial and regulatory consequences.



**If there is weak competition, it is typically the consumer that ends up paying.**





## Encouraging competition in retail banking

Retail banks face some important regulatory barriers to entry because consumers need to trust the firms that are holding their savings. However, the Independent Commission on Banking identified weak competition in retail banking, which could be limiting choice for consumers. So the PRA and the FCA have worked together to identify ways of encouraging competition in this sector, for example, by amending capital requirements and creating the New Bank Start-up Unit.

In March 2013, the Bank of England and the FCA's predecessor, the Financial Services Authority, introduced changes at authorisation that reduced capital requirements for new entrant banks that are smaller and less systemically important. This proportionate approach reduced barriers to entry without adding unnecessary risks to the safety and soundness of the UK financial system.

By offering assistance to prospective banking applicants and newly authorised banks, the New Bank Start-up Unit helps stimulate competition and drive innovation to promote better outcomes for consumers. The Unit gives these firms the information and materials they need to navigate the process of becoming a bank, as well as focused supervisory resource during the early years post-authorisation. We are taking a similar approach with our Asset Management Hub, which we launched in 2017.

### Our powers

To date, the majority of our competition work has been carried out under the Financial Services and Markets Act 2000 (FSMA). We can investigate markets where competition may not be working well for consumers, and intervene where appropriate, for example, by making rules. We can only use these powers for the firms and activities we regulate.

However, we have also been given concurrent competition powers with the Competition and Markets Authority (CMA) for financial services. This brings us into line with other sector regulators such as Ofcom. This means we also have powers under the Enterprise Act 2002 to investigate whether any market for financial services is working well, expanding our powers of investigation beyond those firms and activities that we currently regulate. We can also make a market investigation reference (MIR) to the CMA to investigate a particular market or sector in more depth. Only the CMA has powers to decide whether mergers should be prohibited on competition grounds, but we may give them information

about the firms or markets affected by a proposed merger.

Under our concurrent powers we also have powers to investigate and enforce against any breach of the Competition Act 1998 (CA98) in financial services. Only one authority can formally investigate or take enforcement action on a specific case at any one time. We discuss with the CMA who is best placed to do so and seek to reach agreement as to which authority the case should be allocated to, but ultimately the decision rests with them.

In certain circumstances, the European Commission (EC) may take a competition law case involving financial services in the UK, and we cannot exercise our competition law powers for that case. The EC would consult with us before this happens. We expect this to change when the UK leaves the EU.

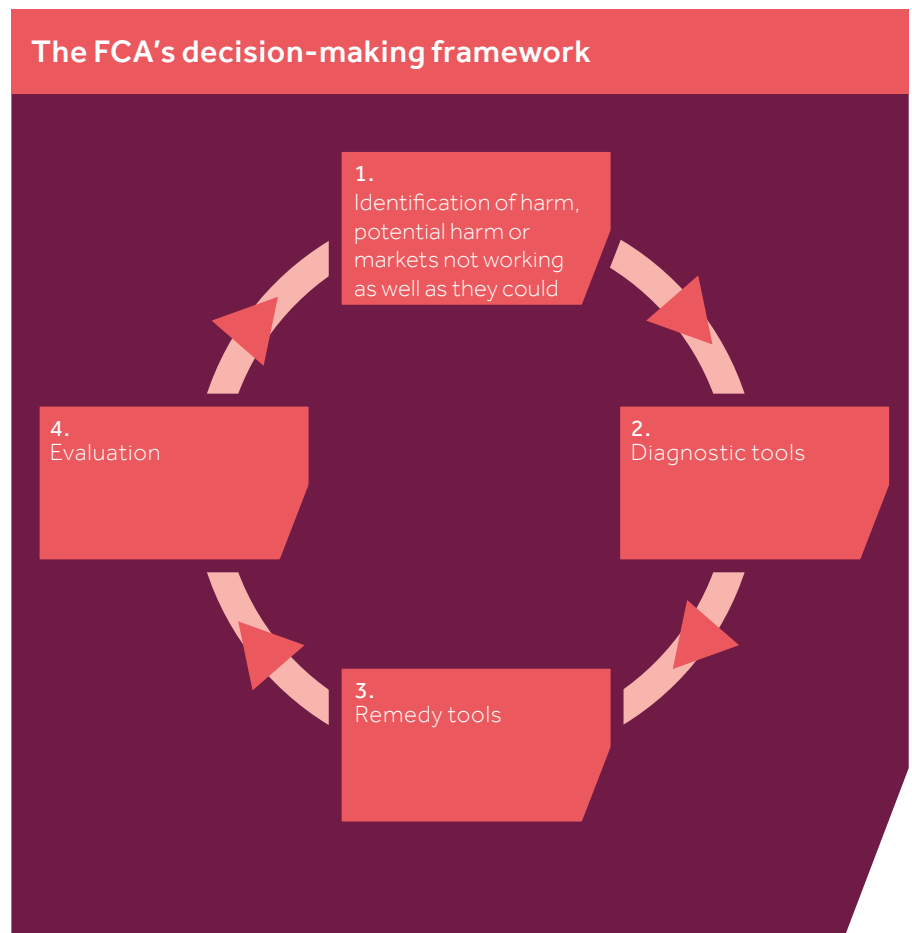
## Chapter 2

# Our decision-making framework

In our Mission, we explain our four-step decision-making framework. This illustrates how we identify potential harm, diagnose and remedy features of a market that do not work well for consumers, and evaluate the success of those remedies to inform our future decisions.

We use this framework across the FCA to diagnose a wide range of harms, their impact, who is affected and which remedies will deliver the greatest public value. It also ensures we apply a consistent approach to balancing competing priorities in our work and make decisions about how our individual functions, such as Policy, Authorisation, Competition, Supervision and Enforcement, operate.

While this document looks specifically at our approach to competition, this framework also covers our consumer protection and market integrity objectives. It enables us to choose the most appropriate diagnostic and remedy tools to tackle the actual or potential harm we identify in all areas of our work.





## Identifying potential harm

Competition is complex and no single benchmark can measure how effectively it is working. However there are a range of market characteristics which can indicate weak competition. These include:

**Concentration** – Markets with only a few suppliers can give these firms market power, meaning they no longer need to compete hard to attract and retain customers. A firm with significant market power may be able to exploit its customers or exclude rivals. Highly concentrated markets can also make it easier for firms to co-ordinate their actions.

**Barriers to entry and growth** – Challenger firms are an important source of competitive pressure for established businesses, as well as bringing new ideas and innovation. In markets where challengers cannot enter or grow, established firms tend to be less responsive to customers, less efficient and less innovative.

**Integrated supply chain** – A firm can be involved in several different stages of a supply chain ('vertical integration'). This can make a market more efficient by creating efficiencies in the supply chain. However, vertical integration can sometimes create conflicts of interest or allow firms to exclude rivals and so avoid competitive pressure.

**Barriers to switching** – Consumers who cannot freely move to the best value firm are harmed directly because they cannot access the product that best suits their needs. Additionally, if firms cannot win business by offering better value, they have less reason to cut prices, improve quality or innovate. Barriers to switching, such as exit fees, unwieldy or time-consuming processes, will prevent or deter consumers from taking their business elsewhere.

**Price discrimination** – In markets where firms broadly charge the same price to all customers, switching by a minority of informed and engaged consumers can drive price down and quality up for everyone. However, where firms can discriminate then only those who switch may get the benefits, possibly at the expense of those who are less engaged.

**Lack of access to information** – Where information is hard to find or understand and compare, it can be difficult for consumers to understand and compare products. This can both directly harm consumers and reduce the competitive pressure on firms.

**Sustained excessive profitability** – When a firm or group of firms compete successfully we might expect their profitability to be high, while less successful firms will make less money. This is part of the competitive process. However where an entire industry is making high returns for sustained periods of time then this may indicate weak competitive pressure.

**Complexity** – Complex products can make consumers feel that financial decisions are 'beyond them' and so follow a path of least resistance rather than make active choices. In this case, consumers are more likely to end up with products poorly suited to their needs, or be overcharged.

In identifying these market characteristics, we use information from a range of data sources and from across the organisation. We publish summaries in our Sector Views. Markets which show some or all of these characteristics are likely to raise concerns for us that competition may not be working well for consumers.

We need to consider each indicator to understand the potential for harm in its market context. The presence of these indicators alone does not indicate whether competition is working well or not.

These types of indicators or characteristics are also not necessarily associated with rule breaches or poor conduct by individual firms.



In terms of conduct:

We are likely to have competition concerns about anti-competitive behaviour. See the section in this document on 'Diagnosing the cause of harm' for how we address these.

If we encounter misconduct which threatens consumer protection or market integrity in the course of our competition work, we will ensure that there is a coordinated response across Competition and Supervision and/or Enforcement. We may conclude that a market is not working well without there being any misconduct, in which case we may seek to remedy the problems in the market by addressing the rules or other aspects of the market framework. See the section on 'Remedies' for more information.

We also recognise the need to consider how markets outside of our regulatory remit can cause harms within markets we regulate. For example, elements of the investment consultancy market are outside of FCA regulation. However, after finding concerns with this market as part of our Asset Management Market Study, we made a [Market Investigation Reference to the CMA](#).

## Anti-competitive conduct

Anti-competitive behaviour can include directly exploiting customers, for example, by charging far too high a price. Or it can involve deliberately reducing competitive pressure, for example, by seeking to unlawfully co-operate with or exclude rivals. These actions are prohibited by CA98 and enforcing this legislation is an important part of our competition remit.

There are two broad prohibitions in competition law. First, firms must not enter into anti-competitive agreements. Cartels and related anti-competitive behaviour can lead to higher prices, lower quality and generally poorer outcomes for consumers – often on a very significant

scale. In 2010 the EC estimated that the removal of overcharges by cartels resulted in approximately €7.2 billion in benefits for consumers (see the [CCP working paper](#)).

Second, a firm with substantial market power (a firm that is 'dominant' in a market) must not abuse that position by behaving in a way that exploits its customers or excludes its rivals. Most financial services markets have many firms in them, so dominance is not an issue. However, there are some markets where there may be one dominant supplier (which is not in itself a problem) who may abuse that position (which is).

Anti-competitive conduct often happens in markets with weak competitive pressure – which can happen when one or more of the characteristics described above are present. Sometimes we also get direct intelligence about this behaviour through sources, such as leniency applications, Principle 11 notifications, complaints and whistleblowing (see Chapter 3 of [FG15/8](#)). We encourage anyone with concerns about anti-competitive conduct to contact us. We set out how to do this in our guidance on our CA98 powers and procedures (See [FG15/8](#)).



**In 2010 the EC estimated that the removal of overcharges by cartels resulted in approximately €7.2 billion in benefits for consumers.**





# Diagnosing the cause of harm

## Diagnostic tools

In the second, diagnostic, stage of our decision-making framework, we set out our 'theories of harm' based on indicators of the potential harm we have identified. A theory of harm is a hypothesis of how competition may not be working in consumers' interests, and how consumers may be suffering as a result. Our diagnostic work focuses on gathering and analysing evidence to test these hypotheses.

Such investigation may take the form of a:

- Call for input
- Market study
- CA98 investigation

We also have a range of supervisory tools which we can use in this diagnostic stage. These are discussed in our ['Our Approach to Supervision'](#).

If we consider the issue is a priority, we can start a call for input or market study. We make it clear that this does not imply that there has been misconduct by individual firms or that we will necessarily intervene. However, we can only start a CA98 investigation if we have evidence that firms have behaved in a way that gives us reasonable grounds to suspect a breach of the law. We explain this in more detail in our [guidance on our powers and procedures under the Competition Act 1998](#). In this situation we will be looking for conduct that infringes CA98 and its EU equivalent.

## Calls for input

Our calls for input are public invitations for views, evidence, examples and suggestions from all interested stakeholders. Rather than requesting specific information or data, we use calls for input as a less prescriptive method for gathering information.

We are more likely to issue a call for input when:

- we are looking at markets where we do not routinely gather the information needed to start a market study
- the scale of potential harm is significant but our theories of harm are less well developed
- we are looking at a number of interrelated markets
- the market is emerging or changing rapidly

Calls for input help us better understand emerging issues in a market and the context, cause, scale and type of the harm we want to prevent. The information we get from a call for input may lead us to launch a market study, to propose remedies or to take no further action.

## Market Studies

Market studies are in-depth, evidence-driven investigations, typically taking 12-18 months to complete. Annex 1 contains the market studies, calls for input and other competition reviews we have launched to date.



## Big Data – helping or hindering competition?

Firms have always collected and used data about their customers to shape their products, services and business models. However, the relatively swift emergence of 'Big Data' (which we define as the use of new or expanded data sets; new technologies to generate; collect and store data; and sophisticated analytical techniques) has the potential to alter the way the industry assesses risk, prices products and selects customers.

For example, potential concerns in retail general insurance include whether 'high risk' consumers will be able to get affordable insurance and whether the use of Big Data reduces risk-sharing across consumer groups. There are also potential concerns about factors that have nothing to do with risk and cost becoming more widely used in pricing.

We issued a [Call for Input on Big Data in retail general insurance](#) for two types of retail insurance – 'motor' and 'home and contents'. We wanted to better understand whether Big Data affect consumer outcomes and competition in these products and whether our regulatory framework affects developments in Big Data in retail general insurance.

We found that Big Data is delivering a range of benefits for consumers in motor and home insurance, and that the potential concern about 'high risk' consumers has not yet materialised in these markets. We also decided to carry out discovery work looking at pricing practices in retail general insurance firms. We know that both technology and the way firms use it evolve quickly. We will regularly monitor developments in Big Data across financial services when reviewing intelligence that feeds into our annual Sector Views.

A market study defines a number of questions to explore or theories of harm (as discussed above) to test. We publish the questions we want to answer in our terms of reference at the start of every market study. The set of questions or theories of harm will focus primarily on how competition works in a market but – since our objectives are interrelated – may also cover how competitive dynamics affect consumer protection or market integrity.

We then engage in extensive research, data-gathering and consultation with firms, consumers and other stakeholders such as charities and trade bodies. While this demands significant resources from both the FCA and other stakeholders, especially firms, market studies can result in far-reaching changes across markets.

This means it is important that we understand all stakeholder perspectives, that our conclusions are based on robust evidence and that our proposals reflect reality.

We prioritise our [market studies work](#) alongside our other interventions as part of our annual business planning.

We decide on a case-by-case basis whether to open a market study and have regard to several factors, including:

- The prospects for and likely impact of any intervention in the market. This will be a combination of the scale of harm and/or market size, and the potential impact of intervening to address the issue in question. We will consider, for example, whether market characteristics indicate low levels of competitive pressure, or whether the market size or type of customer indicates harm of a significant scale or severity
- The scope for the FCA to intervene effectively (taking into account, for example, domestic versus international issues)
- The likelihood of a successful outcome (in terms of being able to intervene to make the market work better for consumers)

- Whether the issue might be better addressed by another form of FCA intervention (such as enforcement, including under the CA98, or supervisory action), or by another authority.

Indicators of potential harm can help us prioritise. However, we often need to do more in-depth work to investigate the extent of actual harm, and diagnose the cause.

### Deciding on the best remedy

Once we have gathered our evidence, we will generally publish an interim report. This report outlines our preliminary findings and proposes possible solutions for addressing any concerns we have. Through open consultation, we then seek feedback on both the findings and any of our proposed solutions. After considering this feedback and undertaking any further work it prompts, we publish a final report which sets out our conclusions and the way forward on solutions or 'remedies'. See [FG15/9](#), page 18.



**Often we do not need to use our formal information-gathering powers to get the data we need.**



Both market studies and our cross-cutting supervisory work take a cross-market view. However, while our cross-cutting supervisory work typically focuses on current or emerging risks across a number of firms within a sector, market studies take a holistic view of a market and try to understand the impact of market forces and structures. A market study is likely to consider the behaviour of consumers and potential new entrants, as well as regulated firms. For more information on our cross-cutting supervisory work see our [‘Our Approach to Supervision’](#).

### Gathering data from firms

As explained, a market study is an analysis of a market (which may include both regulated and non-regulated activities), not an investigation into the behaviour of specific firms. Since it is usually not cost-effective to ask all firms in a market to supply data, we typically select a sample of firms:

- who, together, provide a representative picture of the market, and
- whose combined market share represents a significant proportion of the market.

These samples generally include the largest firms, but we also want to understand the experience of smaller firms so will include some in the sample. We aim to be proportionate in our data requests and can tailor requests according to the size of a firm. Being selected as part of a sample for a market study does not imply a firm has breached our rules or behaved badly.

Often we do not need to use our formal information-gathering powers to get the data we need, though we can use them and have done so in the past at firms' request.

We aim to be as transparent as possible about the basis for our conclusions, to ensure we can have a meaningful dialogue with

stakeholders when we publish our interim report. However, we cannot publish certain data (such as personal and commercially sensitive data). We publish data when and as the law allows us to do so (see [FG15/9](#)).

### CA98 investigations

We have published detailed guidance on our competition law powers and procedures (see [FG15/8](#)). The stages of an investigation consist of fact-finding and analysis, provisional findings and ultimately a final decision. However, for legal reasons we can only make limited information public during our CA98 investigations.

We will discuss with the CMA and, where relevant, the European Commission whether we are the authority that should take a case forward. If so, we can use powers to request information, such as documents and data, and can also conduct compulsory interviews and site visits. If, after investigation, we come to the provisional view that competition law has been infringed, we will issue a 'statement of objections' to the firm. This sets out the applicable law, evidence, our analysis and our proposed decision. Firms can inspect copies of the relevant documents we disclose and can make both written and oral submissions to our Competition Decisions Committee. This Committee will take a final decision and may impose financial penalties.

We have a statutory duty to consider whether it would be more appropriate to use our CA98 powers before using certain FSMA powers (for example certain supervisory powers under FSMA), and we will make a decision depending on the facts of the case (see [FG15/8](#)).

Some breaches of competition law may also breach authorised firms' obligations under FSMA or other legislation. In these instances, we may take enforcement action under our other powers as well as, or instead of, CA98. We decide which of our powers are most appropriate on a case-by-case basis.





## Remedies

### When will we take action?

The type of action we take to respond to competition problems differs between CA98 investigations on the one hand, and market studies on the other. Following a CA98 investigation we may take action to punish individual firms who have breached the law, both to end that behaviour and to deter further breaches from other firms. Following a market study, we typically make rules or take other action to make the market work better in the future, although we will clearly also take steps to address past misconduct if we find it.

### CA98 investigations

Under CA98 we can investigate financial services firms when we have reason to believe they have breached competition law. Based on our investigation, we may:

- Issue an infringement decision, which may involve imposing penalties and/or other directions on firms. We will issue an infringement decision after we have issued a statement of objections and received the parties' representations. We publish infringement decisions in redacted form.
- Accept commitments from firms that they will change their conduct in a way we think addresses our competition concerns.

- Publish a 'no grounds for action' decision if we have not found sufficient evidence of an infringement.
- Close our investigation on the grounds of administrative priorities at any time.

### Market Studies

We will consider taking action following a market study if our analysis identifies competition problems or other issues in the market that are leading to harm. However, we will only intervene where we judge this will be beneficial and proportionate to the concerns we have identified.

## Targeted intervention in the credit card market

Sometimes we find that competition is working well for most consumers, yet there is harm to a smaller population of consumers that justifies our targeted intervention. In 2014, we took over regulation of consumer credit. The credit card market is a major part of this sector, with around 30 million UK adults having a credit card (60% of the adult population). We wanted a better understanding of this market, to identify levels of problem debt and assess if competition was working well for consumers, so we carried out a market study.

In our final findings report, we said we had found that competition was working fairly well for most credit card consumers.

However, we found significant concerns about the scale, extent and nature of problem credit card debt and firms' limited incentives to reduce this. Our findings included:

- around two million people had carried debt greater than 90% of their credit limit for at least 12 months
- another 1.6 million people were repeatedly making minimum repayments on their credit card debt and many did so for a number of years
- we did not find widespread issues about fees and charges, but we did identify one firm failing to treat customers fairly when it came to penalty fees and charges

We did a number of things to remedy these issues. We took supervisory action to resolve the penalty fees and charges issue. We accepted an industry proposal to give customers greater control over credit limits. We trialled alternative ways to prompt borrowers to repay more than the minimum required. And we consulted on two rules. The first required firms to intervene earlier when customers show signs of struggling with their finances, and the second requires firms to take action once a customer has been in significant debt for a considerable period.



## Changing the 'rules of the game' can have a significant impact on how firms compete, and thus on consumer outcomes.



### What action will we take?

We design remedies on a case by case basis. If possible, we aim to address the root cause of consumer harm by improving how competition works in the market, and so improve the consumer outcomes it delivers. We may also seek to protect consumers directly. In either case we consider not only the direct impact of our intervention, but also the likely response of both firms and consumers – the market dynamics. The scale and scope of our intervention is proportionate to the harm we have identified.

The package of remedies we implement can include some or all of the following:

**Rule changes.** Changing the 'rules of the game' can have a significant impact on how firms compete, and thus on consumer outcomes.

Depending on the type of issue identified, we may make rules about:

- providing consumers with better information, for example, requiring general insurance firms to clearly and prominently disclose the customer's previous year's premium at each renewal, to increase awareness of premium increases
- how choices are presented to consumers, for example, changing the way firms present repayment options to credit card holders
- governance, for example, requiring fund boards to consider whether the level and structure of their charges are in investors' best interests
- specific actions, for example requiring asset managers to pass on box profits to investors, or requiring credit card firms to take steps to intervene when customers are persistently indebted

As well as writing new rules, we also aim to remove rules that are

obsolete or hinder competition, such as our recent changes to remove ineffective disclosure requirements (See [PS16/23](#)).

When we propose new rules following a market study, we follow the process required by FSMA. So we consult on any proposed rules or rule changes and conduct a cost-benefit analysis of the expected impact. This allows our stakeholders to see the evidence and reasoning behind our proposals and to feed in views.

**Publishing guidance.** We can also provide new or revised guidance on existing rules to achieve similar, direct changes to a market. Guidance sets a standard for best practice which many firms follow when implementing our rules.

**Supervision or enforcement activity.** Where we are concerned about harm which is or may be caused by a specific set of firms, we can use targeted supervisory or enforcement work. This can be a more proportionate response than market-wide remedies, particularly for where poor conduct is confined to a small number of firms or individuals. For example, in the follow-up to our investment and corporate banking market study, we undertook supervisory work with certain firms to examine the policies and practices for Initial Public Offerings' allocations to shareholders.

**Voluntary solutions.** We encourage industry to propose voluntary solutions to the problems we have identified. For example, our work in the credit card market led to the industry developing tools to give consumers greater control over their finances by providing timely information on their borrowing.

If a remedy needs to change over time in response to changing market conditions then an industry solution may be the most effective and cost-efficient choice.



**Publishing data.** Publishing data on key market indicators (so-called 'sunlight' remedies) can help consumer groups, market commentators and other users assess products and make comparisons. For example, we published the interest rates offered by retail banks for cash savings accounts and claims data for general insurance. By making this information public, we aim to improve transparency, influence consumer and firm behaviour and give firms an incentive to improve the value of their products.

**Market Investigation References (MIR).** Where we have reasonable grounds to suspect that features of a market or markets (which can include the structure of a market, and any conduct by suppliers or customers in the market; or of customers relating to that market) are adversely affecting competition, we can make an MIR to the CMA for an in-depth market investigation. We may also do this when we are concerned about the conduct of firms or activities that are outside our regulatory perimeter. For example, we made an MIR on investment consulting after our Asset Management Market Study found concerns about that market, elements of which are not regulated by us.

**Engaging with other agencies.** Where another government department or agency is better placed to act we will share our findings and provide any support they need.

**Not taking action.** Lastly, we may decide to take no action. We are most likely to do this if we do not have clear evidence of significant consumer harm or we are unable to identify an intervention that would successfully address the issue.

## Regulating for the real world

When thinking about remedies we need to recognise the limits of relying on consumer engagement and active choice to drive good outcomes. Successful competition remedies make it easier for consumers to exercise choice and bolster incentives for firms to change because of the threat of switching or wider reputational concerns. In some markets, the active choices of the minority benefit the (less active) majority. However, in other markets this is not the case and we may need to act to protect those consumers.

In asset management, for example, with evidence of very low engagement among some investors, we proposed governance changes to strengthen the duty on firms to act in investors' best interests when it comes to value for money.

In 'Our Approach to Consumers' paper we set out how behavioural economics informs how we regulate. This is extremely relevant to the way we design remedies in our competition work.

Competition is most effective when consumers are able to judge what products offer the best value and reward firms with their business. This requires us, for example, to make sure that firms supply customers with clear and accurate information. But it also requires us to be realistic about how consumers assess and compare products, to recognise 'behavioural biases' and to ensure our remedies are designed for real world behaviour rather than textbook rationality.

We can use 'nudges' to prompt engagement at crucial moments, for example insurance renewal (described below). We can also regulate how firms present choices to consumers, for example by banning pre-ticked boxes for optional insurance add-ons.

We use consumer research, including lab and field trials, to test how our remedies actually influence consumer behaviour in practice.

## Regulating for all consumers

While the FCA regulates on behalf of all consumers, we recognise that different consumers will be affected to different extents by our measures. Trials can help us understand the impact of proposed remedies on different consumer segments. For example, in designing the persistent debt and earlier intervention remedies for the Credit Card Market Study we carried out behavioural trials with some credit card firms to test different ways of presenting repayment options, to find ways to encourage customers making low repayments to repay more where they can afford it.

Consumers will also have different needs, and some may be more vulnerable than others, perhaps because of their circumstances or their financial capability.

We may prioritise a market study where vulnerable consumers may be at particular risk. We must also consider how effectively a remedy works in practice for vulnerable consumers. See our paper on [Consumer Vulnerability](#) for our definition of vulnerability.



## Regulating for small businesses

Small firms can play a vital role in financial markets, offering competition in markets and choice to consumers.

We are aware, however, that many smaller firms may face barriers to entry and expansion that can arise from the conduct of incumbents or sometimes from regulation itself. Conduct can be tackled potentially by use of our competition powers and we encourage small firms to notify us of any barriers that they face. In terms of regulation, as explained in the section on 'Supporting Innovation', we continue to work with firms to understand how we can evolve our regulatory approach to support entry and expansion.

Small and medium-sized enterprises (SMEs) are also significant consumers of financial services and products. Regulating on behalf of all consumers includes making sure competition works well for SMEs in relevant markets (see [our consultation on this](#)).

For example, as part of our programme of work to promote competition in retail banking following the CMA's market investigation, we have published rules that will require providers of business current accounts to publish information that will help SMEs to compare the service they could receive from different providers.

We are keen to hear from all users of financial services, including SMEs, where they feel markets are not working well or firms are not behaving competitively, in ways that prevent them from getting the products or services that best suit their needs.

## Switching customers on to better deals

**There are over 40 million home and motor insurance customers in the UK. Firms generally increase premiums for existing customers every year, yet only a very small percentage of customers decide to switch to a better deal.**

**We carried out extensive behavioural trials with over 300,000 customers across three firms to find out what was most likely to help consumers to engage at renewal and switch. As a result, from April 2017, we required firms to include the previous year's premium, along with standard advisory messages, when they sent out renewal notices. We will be monitoring subsequent switching rates to see how effective this has been in encouraging customers to switch to better value products.**



## Measuring our impact

Our Mission emphasised the importance of evaluating our interventions, particularly looking at the impact of our interventions and the outcomes in markets.

### Impact of our interventions

We always aim to design packages of remedies that address consumer harm, that are proportionate and that are realistic in terms of likely response by both firms and consumers. For rule changes and guidance, in particular, cost-benefit analysis and stakeholder consultation help with this.

However, we can never be sure that our remedies will work exactly as we expect. So testing the effectiveness of our interventions after the fact is critical. Evaluation helps ensure that:

- we are transparent about the success or failure of our remedies
- we change ineffective remedies
- we demonstrate and, where possible, measure the public value of successful remedies
- we get better at designing remedies in the future

However, post-implementation analysis is rarely straightforward. The dynamism and complexity of financial markets mean it is often difficult to pin down the response of firms or consumers to a particular intervention, or measure the scale of the effects. We therefore conduct detailed evaluations only for our most significant interventions. Since we only began competition work in 2013, we have only recently begun to evaluate our initial interventions.

We published the first of our pilot evaluations in July 2018. The evaluation assessed the effectiveness of our 2015 intervention in the Guaranteed Asset Protection insurance market. Our evaluation found that the intervention has had a positive impact, though less than we initially expected. After our intervention, consumers now engage more with the decision-making process, with shopping around more than doubling. Add-on GAP insurance sales are 16% to 23% lower, and add-on prices are 2% to 3% lower than they would have been without our intervention.

We are evaluating the impact of the FSA and Bank of England's intervention to lower barriers to entry in the banking sector in 2013. We expect to complete this in 2018.

### Market outcomes

We will continue to develop our key indicators of competition in markets, and to improve the market data we collect to enable us to monitor this in real time.

These data sets range from traditional measures of competitive pressure, such as market share and profit margin, to our unique data sets, such as data on consumer complaints from our Contact Centre.



## Annex 1: Market studies, calls for input and other competition reviews launched by the FCA

	Date launched	Final report published
<u>General insurance add-ons market study</u>	December 2012	July 2014
<u>Cash savings market study</u>	October 2013	January 2015
Retirement Income market study	February 2014	March 2015
<u>Wholesale sector competition review – call for inputs</u>	July 2014	February 2015
<u>Credit cards market study</u>	November 2014	July 2016
<u>Investment and Corporate Banking market study</u>	May 2015	October 2016
<u>Call for inputs on competition in the mortgage sector</u>	October 2015	May 2016
<u>Call for inputs: Big data in retail insurance</u>	November 2015	September 2016
<u>Asset management market study</u>	November 2015	June 2017
Retirement outcomes review	July 2016	June 2018
Mortgages market study	December 2016	Ongoing
<u>Strategic Review of Retail Banking Business Models (joint work between Competition and Supervision)</u>	May 2017	Ongoing
<u>Investment platforms market study</u>	July 2017	Ongoing
<u>Wholesale insurance brokers market study</u>	November 2017	Ongoing



# Annex 2: Feedback Statement for Approach to Competition consultation

## Introduction

---

1. We published the consultation version of our Approach to Competition in December 2017. In this we set out how we deliver our competition objective, to promote competition in the interests of consumers, and asked for feedback. Our focus is on keeping markets open to entry and innovation, tackling anti-competitive conduct and intervening to ensure competitive forces drive good outcomes for consumers.
2. We are updating that approach in this document in light of the feedback we received. In this annex, we set out what the feedback said and our response to it.
3. The consultation ran from 11 December 2017 to 12 March 2018. We received over 35 responses from professional bodies, authorised firms, academics, trade associations, consumer groups and the FCA's statutory panels.
4. Having considered the responses, we did not think it necessary to make significant changes to the Approach to Competition document. However, we have made some changes to address certain feedback topics. In particular we add further clarity and detail to how we consider:
  - the impact of firms outside of our regulatory perimeter
  - indicators of harm in a wider context of their market
  - the impact of our remedies on the full-range of consumers
  - small and medium-sized enterprises (SMEs) as consumers of financial products

## Feedback

---

5. We asked 4 questions in our 'Approach to Competition'. We summarise the answers and comments here, giving our response to that feedback and indicating where we have changed our Approach to Competition document as a result.

### Competition remit and powers

6. We asked:

**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?*



7. Most respondents agreed that they understood our remit and powers and that the document clearly set out our competition objective and what it means in practice. Many also welcomed the detail we give and our efforts to make the process as clear and transparent as possible.

### Competitiveness

8. Some respondents asked us to:

- clarify our remit and powers in relation to competitiveness
- provide more information on how we see the link between competition and competitiveness

9. The FCA's statutory objective is to promote competition in the interests of consumers. We are independent but accountable to the Treasury, which has the power to make recommendations to us that we must consider when deciding how to act. The Treasury has recommended<sup>1</sup>, under section 1JA of the Financial Services and Markets Act, that when we consider how to advance our objectives, we should, where relevant and practical, take a number of aspects of the Government's economic policy into account. One of these aspects is competitiveness and ensuring that that the UK remains an attractive domicile for internationally active financial institutions, and that London retains its position as the leading international financial centre.

10. We do this in several ways, including by strong and active supervision and enforcement and by ensuring that financial institutions can thrive in markets that are free of the distortions arising from ineffective competition. This is not, however, about promoting or supporting the individual competitiveness of firms.

11. As stated in our Approach to Competition, effective competition that increases efficiency and productivity is likely to make UK financial markets and firms an attractive proposition internationally. This includes in the context of the UK's withdrawal from the European Union.

### Interaction between Competition and Supervision

12. Some respondents asked us to be clearer about how our competition and supervisory functions interact, and the balance between using our competition and supervisory powers.

13. Our operational objectives to protect consumers, enhance market integrity and promote competition in the interests of consumers apply to all our general functions. This includes making rules, general guidance and policy making.<sup>2</sup> To deliver on these operational objectives effectively, we work closely together.

14. In addition to this, we have a duty throughout the FCA to consider the impact on competition. We are obliged to discharge our general functions in a way that promotes effective competition in the interests of consumers, provided that doing so is compatible with meeting our market integrity and consumer protection objectives. This means that where we are furthering those objectives we must pick the most pro-competitive way to do so.

15. In discharging our functions, we must also have regard to a set of regulatory principles that include the need to use our resources in the most efficient and economic way and

<sup>1</sup> Section 1JA of the Financial Services and Markets Act 2000 (FSMA) requires HM Treasury, at least once in each Parliament, to make recommendations to the FCA about aspects of the economic policy of the government to which the FCA should have regard when advancing its objectives and discharging its duty under s.1B(4) FSMA. See [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/597668/Recommendations\\_Financial\\_Conduct\\_Authority\\_Spring\\_Budget\\_2017.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/597668/Recommendations_Financial_Conduct_Authority_Spring_Budget_2017.pdf) for HM Treasury's most recent recommendations to the FCA

<sup>2</sup> Section 234N of FSMA provides that the FCA's general duties do not apply to the FCA when carrying out its concurrent functions under the Competition Act 1998. Equally, s.1B provides that the strategic and operational objectives only apply when the FCA is discharging its general functions, which do not include its concurrent functions.





to be proportionate in the imposition of burdens and restrictions on firms (see [FSMA](#)). This requires close co-operation between different areas of the FCA to ensure that, wherever possible, we work in a co-ordinated way so we ensure, for example, that we don't duplicate any requests for information to firms. It may also mean that, where appropriate, we will re-use information previously gathered from thematic reviews, for example, instead of asking firms for new information. Where we do issue data requests, we liaise with firm Supervisors to discuss any issues that may arise and to deliver the data requests in the most efficient way.

- 16.** Our Supervisory and Competition functions interact on a day-to-day basis in several important ways:
- The work that Supervision carries out gives us a clear view of how the financial system works as a whole and within individual sectors and markets. Depending on the circumstances, we may, because of intelligence gained through supervisory activities, undertake individual or multifirm supervisory work. Or we may decide that given the circumstances of a particular issue, a competition tool such as a market study may be more appropriate.
  - Although led from Competition, market studies are FCA-wide projects and involve colleagues from across the organisation. There is also close liaison with other departments throughout the market study. Indeed, in the development of remedies we work closely with our Policy and Supervisory functions to ensure that remedies will achieve their stated objectives and can be implemented in practice.
  - Work that Supervision carries out will also often directly inform and feed into the findings of market studies. For example, Supervision's thematic review of non-advised drawdown pension sales found that some consumers are not receiving comprehensive charges information, either when they enter into drawdown or on an ongoing basis. This helped to inform our findings and remedies on disclosure as part of the Retirement Outcomes Review.
- 17.** In their day-to-day interaction with firms, Supervision may identify potential breaches of competition law by firms or potential issues with the way competition works within a particular market. In these cases, we will work with Supervision to understand if any further work or investigation needs to be undertaken.
- 18.** Regarding the balance between using our competition and supervisory powers, we decide on a case-by-case basis whether supervisory action or a competition investigation is the appropriate tool for diagnosing and remedying the harm in question.
- 19.** As set out in section 234K FSMA, our 'primacy' obligations mean that, before exercising certain of our regulatory powers set out in FSMA, we have a duty to consider whether it would be more appropriate to proceed under Competition Act 1998 (CA98) powers. If we consider that it would be more appropriate to proceed under CA98, we must do so rather than exercise that other power.
- 20.** However, broadly speaking, we may conduct a thematic, or multi-firm, review through our supervisory function where we consider harm might be arising due to the conduct or culture of firms. We typically undertake a market study where we consider that the drivers of harm might arise due to how the market itself functions. This may be due to how consumers interact with the market or the way in which the market is developing in terms of entry and exit.
- 21.** Our [Approach to Supervision](#) sets out how, in practice, we supervise the firms and individuals we regulate.



### Supporting innovation

22. A small number of trade organisations felt that the FCA provides a greater degree of regulatory support to new firms with innovative, technology-based business models, at the expense of established firms.
23. We have the discretion to decide how best to use our resources to achieve our objective of promoting competition in the interests of consumers. We introduced the Innovate initiative to encourage market entry and innovation in financial services, removing barriers where appropriate and ensuring that all firms meet the same high regulatory standards. Support from Innovate, including the regulatory Sandbox, is open to all firms that have or are proposing genuinely innovative business models that are in the interests of consumers, irrespective of sector or size.
24. While most Sandbox firms have required authorisation to do testing, the Sandbox is open to any firm that will be carrying out, or is directly supporting another firm in carrying out, regulated financial services activities. Large authorised firms have tested innovations in the Sandbox that, following a successful test, they have gone on to make available to their wider customer base.
25. Further, partnerships between large firms and start-ups in the Sandbox have proven to be successful for both parties. For example, an established bank worked in the Sandbox with a small technology provider to provide their customers with an app encouraging saving. The partnership model allows start-ups to test their proposition in a live environment, with access to a larger consumer base. Partnerships with start-ups enable larger firms to innovate and improve products at a faster pace, without having to go through the full development process themselves. Some large firms have stated that this process often identified ways to improve their own procurement and governance processes for on-boarding start-ups.

### Price regulation

26. Some firms and trade organisations welcomed the fact that as a competition regulator, the FCA's primary role is not to regulate price. They noted that regulating price can have unintended consequences and that any intervention should be carefully considered.
27. We will generally try to remedy the root causes of harm, to get markets to work well for consumers. However, there will be times when we intervene directly to protect customers or improve competition, including by regulating prices.
28. We agree that any intervention, be it on a specific aspect of price or on overall price, should be carefully considered. This includes the potential for negative unintended consequences to arise from price regulation. We are required to carry out an analysis of the estimated costs and benefits arising from rule changes, unless they cannot be reasonably estimated or it is not reasonably practicable to produce an estimate. For major interventions, we carry out evidence-based cost benefit analyses and user testing. We are also committed to carrying out post-intervention evaluations for our most significant interventions. You can read how we measure the impact of our interventions in Our Mission.
29. We have introduced a number of price controls in recent years, namely on high-cost short-term credit (2014), workplace personal pension schemes (2015), and early exit pension charges (2016). In each of these cases, the duty to directly regulate prices came through primary legislation. However, our remit and powers under FSMA do allow us to regulate price when we consider it necessary, without additional primary legislation.



## Other indications of potential harm

---

30. We asked:

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

31. Most respondents from firms, consumer groups and trade associations welcomed the indicators we listed in the Approach to Competition. However, some felt that the list was not comprehensive enough, and suggested further harms to consider, which are detailed below.

### Consumer output indicators

32. A small number of consumer groups suggested that our indicators of harm should be focused more on consumer outputs. One example given was having consumer detriment as an indicator of harm.

33. Our competition objective is to promote competition in the interests of consumers. When looking at markets, consumer outputs are integral to our thinking. We agree that identifying detriment would indicate a market is not working well for some or all of its consumers. However, consumer detriment can result from one or more factors existing in a market. By focusing on the indicators or causes of harm (such as complexity or lack of access to information) we look to tackle the root cause of the harm. This supports the identification and development of more effective and robust remedies.

34. But the size and nature of the detriment remains an important consideration in deciding whether it is proportionate to intervene or how to design our remedies to best effect. So it is something that forms part of our overall thinking.

### Firm conduct as an indicator of a market not working effectively

35. Some consumer groups felt we should consider firm conduct as an indicator of a market not working well, and particularly conduct that leads to consumer detriment. A small number of respondents wanted us to draw attention to the link between firm conduct and the impact on competition.

36. We agree that firm conduct can cause a market to deliver ineffectively for its consumers. But, like the point we make above on consumer outputs, we need to analyse that conduct to fully understand its impact. For example, conduct could include any of the indicators we have mentioned, such as price discrimination or using complexity to make decision-making difficult for consumers. By focusing on the indicators, we are taking the first steps to identifying what interventions, if any, would make the market work better for consumers.

37. We would not hesitate to take direct action against that conduct if we identified breaches of FCA rules or of competition law.

### Impact of markets outside of the FCA's remit

38. Respondents, including a consumer group and a firm, asked for clarity on how the FCA treats markets on the periphery or on the outside of its remit, but which have an impact on regulated activity.

39. As explained in our Approach to Competition, our analysis of a market may include both regulated and non-regulated activities and firms. This holistic approach may mean that, where relevant, we will examine how non-regulated activities are affecting competition in the markets that we do regulate.

40. For example, investment consultants play a significant role in advising pension fund trustees when they are procuring asset management services. But not all investment



consultation services fall within our regulatory remit. As part of our Asset Management Market Study, we identified concerns in the investment consulting market. These included the relatively high and stable market shares for the 3 largest providers, a weak demand side, relatively low switching levels and conflicts of interest. As a result of this, we decided to make a Market Investigation Reference to the Competition and Markets Authority (CMA) in September 2017 on investment consultancy and fiduciary management services. We have amended our Approach to Competition to reflect this.

41. We also have the power to conduct a market study under the Enterprise Act 2002 in relation to the provision of financial services. These powers apply to firms beyond our regulatory perimeter under FSMA (ie those we do not authorise or regulate under FSMA).

### Considering an indicator in its wider context

42. Trade organisations highlighted that indicators need to be considered in the context of the markets in which they occur.
43. One of these respondents highlighted the example that a case of low switching in a market may not indicate that consumers aren't engaged or shopping around, but that firms are providing good value and service to their customers. Conversely, persistent switching in another market could represent poor consumer decisions. For example, fees associated with changing providers too often in long term markets such as pensions and retail investment may erode a consumer's holdings.
44. As noted in the Approach to Competition, competition is complex and what can give rise to harm in one market may be relatively or totally benign in another. For example, some products such as certain investment products may be, by their nature, complex but may be low risk if, for example, governance standards are high. Further, they may be suitable for consumers who need such products, therefore offering consumers choice.
45. However, harms can arise in cases where complexity leads to consumers finding it difficult to understand the value of their financial product. We found in our Retirement Outcomes Review that charge structures for income drawdown products can be complex, unclear and hard to compare. We discovered this may make it hard for consumers who don't take advice to fully engage with the product and could make it harder to make good decisions. It also makes it difficult for consumers to compare providers and shop around. This contributes to the limited competitive pressure on providers to offer good deals.
46. Similarly, price discrimination is not in itself an unfair practice. It can be relatively uncontroversial where it can allow people to access a product or service that they would otherwise not be able to afford (for example, student discounts on cinema tickets). In other markets it can cause harm, for example where price discrimination is being applied to vulnerable consumers who, for various reasons, cannot easily switch supplier.
47. We agree that it is important to consider indicators within the context of a given market. We have amended our Approach to Competition to make this clearer.

### Other tools as remedies

---

48. We asked
- Q3:** *Are there other tools we could consider when designing remedy packages?*
49. Respondents raised a number of issues in response to this question.



### Engagement and consultation with stakeholders

50. Some firms and trade organisations encouraged us to design remedy packages with greater engagement and involvement with industry and stakeholders. A particular concern is that our thinking on remedies is not exposed until the initial findings phase. The firms and trade organisations who responded to this point supported a more collaborative and open approach informed by working papers and meetings to enable firms to engage before findings are reached. One firm suggested we take this collaborative approach in allowing market participants to propose voluntary solutions which could be implemented in lieu of regulation.
51. We agree that effective consultation leads to better interventions. Engagement with a range of stakeholders, including industry firms, trade organisations and consumer groups, is an important part of the market study process. We may, in some cases, seek views or gather information through a Call for Input or at the Terms of Reference, as well as the Interim Report stage on potential remedies. We also often publish Consultation Papers at the Final Report stage to consult on any final remedies we propose to implement.
52. These periods of consultation and feedback also provide useful opportunities for engagement with a wide variety of interested stakeholders via, for example, roundtables, events and meetings so that we can seek views, test out our findings and provide further clarity if required.
53. We have to find the right balance between making the time to engage with a wide range of stakeholders, and moving to tackle harm with pace and agility. That said, we are continuously seeking to refine and improve our ways of working, including how we get the most from our interactions with stakeholders, in light of experience and feedback. Our approach to effective stakeholder engagement is evolving over time. And where appropriate, we will consider alternative approaches. For example, in the Credit Card Market Study, we worked with firms to agree and implement voluntary measures designed to give customers greater control over their credit limits and ensure that those in persistent debt are not offered credit limit increases. Voluntary measures will not, however, be suitable in all circumstances.
- The need to consider the impact of remedies on a full range of consumers**
54. Consumer organisations fed back to us that the FCA should consider how its remedies affect different consumer segments. With a particular focus on the impact on vulnerable consumers, but also the less financially literate or those unable to engage with their financial products. In addition, some respondents considered that we should be giving a higher weighting to vulnerable consumers in our cost-benefit analysis of remedies.
55. While we regulate on behalf of all consumers, we recognise that different groups of consumers will have different needs, and we consider both consumer capability and vulnerability when designing remedies<sup>3</sup>. This may mean that we may prioritise remedies that help vulnerable consumers who are unable to shop around, for example, over consumers who can shop around but choose not to do so. Our [Approach to Consumers](#) outlines the FCA's approach to regulating for different consumers, including for vulnerable consumers. We have amended our Approach to Competition to make this clearer.
56. We also regularly engage with the [Financial Services Consumer Panel](#), an independent statutory body which represents the interests of consumers in the development of FCA policy. Engagement with our Consumer Network, a forum for discussion with key consumer organisations including Which?, Money Saving Expert, Age UK and Citizens Advice, also helps us to keep aware of current consumer issues, to identify and diagnose harm as well as tailor remedies.

3 Section 1C(2)(b) FSMA



### Supply-side remedies

57. Consumer groups encouraged the FCA to place greater focus on supply-side interventions when designing remedies. These organisations particularly highlighted switching and price discrimination as issues that cannot be effectively addressed by governance or disclosure remedies and needed more direct supply-side interventions rather than demand-side remedies.
58. We recognise the limitation of consumers' power alone to drive competition and good outcomes. Our acknowledgement of this in our Approach to Competition, covered in the section 'Regulating for the real world', was welcomed positively by many respondents.
59. When we are designing remedies, we consider which remedies best suit the particular market in question. This is most often a combination of both demand and supply-side remedies. For example, in our Credit Card Market Study, we implemented remedies to help consumers shop around, such as facilitating easier access for consumers to their credit card usage data to allow more accurate comparisons, and promoting the use of quotation searches. But, we also proposed and implemented rules stating firms must offer customers in persistent debt help to repay the debt more quickly. This includes showing forbearance where customers cannot afford increased repayments. This is an example of where we have implemented rules requiring firms to act to prevent or mitigate consumer harm.
60. Additionally, as part of the package of remedies from the Asset Management Market Study, we implemented rules requiring fund managers to return any risk-free box profits to the fund and investors.
61. We continue to develop our remedy approaches in light of experience and using research and behavioural science. We also seek to build our knowledge of 'what works' by drawing on the experience of other regulators, academic literature, and our own ex post evaluation programme. This all helps to make our interventions more targeted and effective.
62. Also, continued input from consumer groups and our Consumer Panel provides us with the appropriate checks and balances, particularly on proposed demand-side remedies.

### An over-reliance on creating the right conditions for competition, and a reluctance to use direct powers and tools

63. Some consumer groups thought that the FCA is too reluctant to use its direct regulatory powers, such as product intervention and price capping, to mitigate harms. There was also feedback from a trade organisation that the FCA's preference is to make or re-write rules rather than to take direct action against actors in the market who may be causing harm.
64. Our response depends on the nature of the specific harm and the market in which it occurs. We have a broad range of legal tools to address competition concerns. When considering a competition issue, we consider the appropriateness of the available tools when deciding what action, if any, to take. These tools include market studies, but also enforcement action under CA98 or FSMA powers. We also have more general regulatory and rule-making powers. Our guiding principle is to choose the tool that will allow us most efficiently and effectively to investigate and if necessary remedy the possible harm that we have identified.



## Further clarifying our approach

---

65. We asked:

**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?*

66. Most respondents from consumer representatives to firms and trade associations agreed that the document clearly sets out the FCA's approach to competition.

67. They also welcomed our commitment to transparency in evaluation and testing the success of our most significant interventions.

### **Market studies are too lengthy and burdensome on firms**

68. A number of firms and trade organisation thought that our market study process was too long and involved extensive deployment of resources from firms who are within its scope. There was also a suggestion that we should reduce the time taken to complete a market study as markets can change and evolve quickly. Any remedies proposed may be out of date by the time they are implemented. Some firms and trade bodies also stated that data requests made by the FCA as part of the market study process place a disproportionate burden on firms.

69. Firstly, when carrying out a market study we do consider market dynamics and the fact that a market may be constantly evolving and conditions may change. We look at the market from a short, medium and long-term perspective, and this helps to ensure that our remedies not only address the current harms but also puts the market on a good footing for the future.

70. In terms of the length and burden placed on firms, we acknowledge that market studies can take some time to complete and can place a burden on firms including in terms of information requests and the need to engage in our consultations. Our aim is to reach conclusions as quickly as possible. However, we are an evidenced-based regulator which means our interventions are founded on data, research, and robust assurance checks within the organisation. We require a certain level of data to analyse a market, design remedies and support our decisions to intervene or otherwise. This timescale also allows time for firms to respond to various publications including interim reports or any consultations on proposed remedies.

71. We try to minimise the burden on firms and be reasonable with what we request. Our internal Information Governance Board looks at any requests that we make for data and information from more than one source. This ensures that large scale requests are appropriate and proportionate, with clarity of purpose and a clear engagement plan with those supplying the data.

72. We try to take an aligned approach when requesting data. Competition communicates with Supervision and other parts of the FCA to carefully consider requests, so that we can use existing in-house data and avoid overlapping requests for information.

73. We also look to engage with firms directly through the process of a market study, including to communicate why it is important that we obtain relevant data. We will, for example, consider requests for more time to respond to information requests and give all possible help either by telephone or meeting to help firms respond.

74. However, we are continually looking to improve our processes, and we are keen to deliver the best results in as short a time and as efficiently, as possible. Our work on Motor Finance is an example of us exploring market dynamics without launching a full market study.

**Interventions should be focused on those who cause harm instead of bringing in all firms**

- 75.** A small number of respondents felt we should be targeting our efforts on those firms who cause harm, rather than introduce remedies that impact many or all firms within a market. Trade bodies in particular stated that all firms should not have to face interventions or increased regulatory burdens simply because we have found harms in a market.
- 76.** A market study is a 'fact-finding' process, and not an investigation into allegations against firms. The purpose is to identify where competition is not working well and implement remedies to address these issues. Our analysis needs to cover the breadth of a particular market to understand potential consumer, firm and structural factors that could impact competition. A focus on the whole market will show us what the drivers and barriers are that are causing competition issues.
- 77.** In particular cases, we often find harms that need to be addressed by structural or behavioural remedies because it impacts an entire sector or market. By their nature, these remedies will affect many firms. The Credit Card Market Study, for example, identified some concerns with persistent credit card debt, and implemented market-wide remedies to tackle persistent debt and encourage earlier intervention from firms. However, we also identified some individual firm issues relating to promotional offers and fees. Our Supervision teams engaged with the relevant firms directly to address these issues.
- 78.** As part of our Retirement Incomes Market Study we used our competition enforcement powers to issue letters to a number of firms putting them on notice of the potential for infringements of competition law, in relation to their distribution arrangements and strategies. Due to our actions, the firms undertook initiatives to strengthen competition compliance protocols. In this case we focused on action against specific firms as we did not have competition concerns about most of the arrangements we looked at.

**Greater emphasis on SMEs as consumers**

- 79.** An FCA panel and a trade organisation suggested that greater emphasis should be given to SMEs (including small financial services firms) as consumers of financial services when designing remedies.
- 80.** One respondent also highlighted the fact that some smaller firms may be more vulnerable to harm compared to larger firms, who may have greater financial capability.
- 81.** SMEs are an important type of consumer, and purchase a range of financial products from business bank accounts to insurance products. Regulating on behalf of all consumers includes making sure competition works well for SMEs in relevant markets.
- 82.** For example, as part of our remedy package to help customers to make meaningful comparisons of the services different current account providers offer, we published rules requiring providers of business current accounts (BCAs) to publish service and performance information about current account services they provide. These are particularly focused on improving the experience for smaller SMEs and sole traders who tend to have less financial capability or support, for example having no dedicated finance personnel.





© Financial Conduct Authority 2018  
12 Endeavour Square London E20 1JN  
Telephone: +44 (0)20 7066 1000  
Website: [www.fca.org.uk](http://www.fca.org.uk)  
All rights reserved