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The IoD welcomes the opportunity to respond to the Competition and Markets Authority's Annual Plan. In the third full year of the CMA's existence, it is crucial that welcome progress is built on to ensure markets are fair and open.

About the IoD

The IoD was founded in 1903 and obtained a Royal Charter in 1906. It is an independent, non-party political organisation of approximately 35,000 individual members. Its aim is to serve, support, represent and set standards for directors to enable them to fulfil their leadership responsibilities in creating wealth for the benefit of business and society as a whole. The membership is drawn from right across the business spectrum. 71% of FTSE 100 companies and 51% of FTSE 350 companies have IoD members on their boards, but the majority of members, some 70%, comprise directors of small and medium-sized enterprises (SMEs), ranging from long-established businesses to start-up companies. IoD members' organisations are entrepreneurial and growth-orientated, and more than half (57%) export goods and services internationally.

Response

The free market relies on free and fair competition. It is clear, therefore, that the CMA has an important part in ensuring UK markets remain as competitive as possible; not just because those markets will deliver better outcomes for consumers and businesses, but because they are crucial to continued economic growth and the benefits of such.

As the CMA is now firmly bedded in to the business ecosystem, 2016 presents an opportunity for the organisation to play a key public role as a cheerleader for open competition and free markets, and as a safeguard against particularly uncompetitive practices or government policies. We will now turn to specifics

Turning to specifics, the IoD continues to feel that a focus on price comparison websites is much-needed. Many of the provisional remedies included in the retail banking investigation, for example, have at their heart the use of price comparison websites as a tool for consumers and businesses alike to pursue the best possible deal. It is crucial, therefore, that price comparison websites are free and fair, and suitably independent from providers of advertised products. This is a difficult balance to strike; however, guidance from the CMA will no doubt serve to illustrate where that balance is best achieved and offer guidelines for price comparison websites going forward. We have seen anecdotal evidence, too, in which some price comparison websites do not necessarily always display

the 'best deal' in a clear and obvious way. Concerns over this have the potential to increase. While technology has made these sites possible, it is also true that increased awareness of data analytics could lead to a certain 'gaming' of results on the sites depending on the user. It is right that the CMA is to look in to this.

Another significant issue for IoD members (and one that the CMA should consider investigating) is late payments. This is a problem that continues to stifle company growth and taint the integrity of supply chains across sectors of the UK economy. Instances of late payments tend to vary in prevalence from sector to sector, with manufacturing consistently highlighted as poorly performing. Across the board however, 68% of IoD members have said that they have experienced late payments and 26% noted that this issue was consequently passed along the supply chain. Importantly, 40% of members put the reason down to 'an excessively bureaucratic payment system' at the company being invoiced, while 24% put the reason for the late payments down to 'grossly unfair terms or practices being used by larger firms in the supply chain. Although a slew of measures have been brought forward at both EU and national level to address the issue over the past couple of decades, the problem is still widespread.

Part of the continued problem lies in the unwillingness of small firms to call out poorly performing customers for fear of compromising relationships with larger players in their supply chains. Importantly, measures brought forward to deal with late payments have had little or no effect on reducing this trend. As part of the CMA's broader goal to improve the way competition works in the UK, an investigation may go some way towards alleviating an issue that is both anti-competitive and deeply ingrained within the UK business culture.

Plans for the CMA to assess the direct financial benefits to consumers of the organisation's work are welcome. We would only caution that the assessment must be sufficiently robust, demonstrably thorough, and peer-reviewed; any suspicion that the CMA has marked its own homework overly favourably would damage the reputation of the organisation and could delegitimise its interventions.

We also welcome the increased focus on the public sector and its procurement strategy. If government projects are to deliver desired outcomes whilst ensuring taxpayers' money is spent appropriately, real competition is necessary right across the public procurement process. With a number of infrastructure projects in train and the increasing use of private providers to deliver heretofore publicly-provided services, this area will be of increasing importance.

The IoD is pleased to see an acknowledgement of the need to ensure fair competition without imposing "unnecessary regulatory or legislative barriers." IoD members consistently rank regulation as one of the three biggest factors holding back their business growth (alongside skills and taxation) and as such any further impositions would be undesirable. Engaging with local authorities, too, should be a crucial part of the CMA's work. Often, local government anti-competition regulatory interventions can slip under the radar of national policy-making and representative bodies yet can cause significant problems for local businesses affected; the additional voice of the CMA at the local level would, we hope, ameliorate some of the worst examples.

Particularly welcome in the CMA vision is a commitment to encourage effective competition where markets and business models are evolving. We recognise that where disruptive business models are reshaping markets there will be competition issues. We would urge the CMA to encourage regulators across the board to take a less-is-more approach; where insurgent firms or business models are disrupting older models, the emphasis should be on creating a level playing field at the lower end of the regulatory spectrum rather than the higher. It is important to recognise that the

CMA has an important precedent-setting role in this area; as is noted elsewhere, the UK's competition regime is well-respected abroad. Acknowledging the need for a level of regulation in evolving industries but encouraging open markets rather than protectionism must be the focus of the CMA with regards to evolving business models.

Compliance and complaints

The CMA is absolutely right that the majority – in fact, almost all – want to comply with the law and engage in open, free and fair markets. It is crucial that the CMA, however, does everything possible to ensure that business owners and directors are as up to date as possible with competition law so that they are fully compliant.

To illustrate the point, we have often heard that the greatest concern business owners have with new regulatory interventions is that they are unclear which of them applies, to what extent, and to whom they should direct queries. It is crucial that the CMA does everything it can to educate businesses about their obligations and their options with regards to competition law. The IoD, and the other business representative bodies as well as smaller trade associations, no doubt have a role to play and we would welcome continuing dialogue with the CMA to spread the word as widely as possible.

Mergers work

The IoD believes the CMA needs to be clearer about the wording below.

“The CMA may decide not to refer a merger for a phase 2 investigation even if it believes that it is or may be the case that the merger has resulted or may be expected to result in a substantial lessening of competition in a UK market.”

We would hope the CMA would clarify in what circumstances it would not pursue a phase 2 investigation despite there being competition issues in the final Annual Plan. In particular the nature of the ‘undertakings’ the CMA would accept in lieu of a reference for a phase 2 consultation should be made more explicit.

Partnership and Advocacy

We firmly believe that the CMA has an important role to play in the public discourse around competition, markets and the economy in general. We were heartened to see a rigorous public intervention from the CMA towards the end of 2015, in which the anti-competitive proposals put forward by Transport for London with regards to private hire vehicles were heavily criticised. We would hope to see more interventions of that nature in the future; one of the CMA's great opportunities is the use of a bully pulpit. It is important that the CMA, where justified, is not afraid of using it.

We also look forward to the publication of the research project into the indirect benefits of competition policy to the economy and consumers. It will be unsurprising that the IoD strongly believes that competition is beneficial to the economy, businesses, and the country as a whole; further evidence of indirect benefits will only strengthen that case.

In addition, the ‘advocacy’ role of the CMA is important not just as a reactive measure to anti-competitive policies or behaviours, but as a proactive measure to encourage government to prioritise competition and open markets. One obvious example is around the roll-out of the midata programme to small- to medium- enterprises, which would have a potentially transformative effect in the way businesses interact with service providers – particularly in finance, energy, and other

infrastructure providers. CMA support in encouraging the government further along this path would be hugely welcomed by the business community.

Furthermore, we particularly welcome the commitment within the Annual Plan to provide input into the European Commission's work on the Digital Single Market. It is no secret that the single market in digital technologies is far from complete, and the IoD has long argued that it should be a priority within the European Union and its various constituent parts. Progress has been slower than we would like; as well as constructive engagement through normal policy-making channels, there is a part for the CMA to play in the wider public discussion if progress continues to be insufficient.

We welcome the consumer engagement plans included in the document, but would also like to see a level of business engagement as well. Many issues which are viewed in the press as instinctively 'consumer' issues have significant impacts on businesses too, and indeed, those impacts can have real knock-on effects. Indeed, there is also a discussion to be had around whether the smallest businesses should be granted the same rights and level of protection as consumers when it comes to purchasing certain products.¹

The IoD would be willing to facilitate roundtable events around the country with small- and medium-sized businesses if the CMA felt that would be helpful to its work. We recognise the financial restrictions placed on all public sector bodies in light of the continuing deficit reduction strategy (which, incidentally, we also support) and recognise that collaboration and partnership between public sector bodies and their relevant stakeholders will be more important than ever in delivering high-quality outcomes within a tighter financial framework, and stand ready to do our bit where feasible.

We hope that you find these comments useful and look forward to seeing the results of the consultation. If you have any comments or questions, please don't hesitate to be in touch.

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¹ Amelia Fletcher, Antony Karatzas and Antje Kreutzmann-Gallasch (2014) ['Small Businesses as Consumers'](#)
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