



Law Society  
of Scotland

# Consultation Response

Competition and Markets Authority annual plan 2018  
to 2019

January 2018



## Introduction

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

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

The Society's Competition Law Sub-committee welcomes the opportunity to consider and respond to the consultation on the *Competition and Markets Authority annual plan 2018 to 2019*.<sup>1</sup> The Sub-committee has the following comments to put forward for consideration.

## Response

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### New office in Edinburgh

We welcome the commitment to strengthening the CMA's presence in Scotland with an expanded office. We understand that this is intended to work as a fully functioning CMA office, introducing a substantive investigation/enforcement team which would take the lead on Scottish cases while also participating in CMA's UK-wide projects. It makes sense that competition issues which are of significant importance in Scotland and directly impact Scottish consumers/public, should be dealt with by locally engaged staff in a reformed Edinburgh presence and we look forward to working collaboratively with the new team as appropriate.

In our response to the House of Lords inquiry into the impact of Brexit on UK competition policy,<sup>2</sup> we emphasised the importance of ensuring that the impact on the specific Scottish market is taken into

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

<sup>2</sup> September 2017 – see: [https://www.lawscot.org.uk/media/10534/comp-lss-response-to-hol-im-sub-com-brex-it-competition-inquiry\\_sep-17-2.pdf](https://www.lawscot.org.uk/media/10534/comp-lss-response-to-hol-im-sub-com-brex-it-competition-inquiry_sep-17-2.pdf)

account in assessing the competition law implication of a particular case. Some “smaller” cases which may not have as much impact in the rest of the UK but could have more significant consequences when assessed in the light of the Scottish market, or a particular region, perhaps particularly in more remote rural parts of Scotland. The introduction of a new Scottish office could help to ensure that such cases are reviewed from the devolved perspective as staff will be “closer to the ground” in relation to Scottish impacts.

Once the team is in place, we would consider that staff in London leading on UK-wide projects should routinely ensure consultation of staff in Edinburgh to gain additional information on the Scottish perspective/impact on the issue at hand.

We also note the positive effect of this would be that staff in Edinburgh would have greater exposure to different kinds of work as part of the wider UK team, that they might not always get access to in Scotland, depending on caseload. This would help to develop the experience and skillset of Scottish based staff.

## Technology

We note that impact of technology on competition issues features prominently throughout the annual plan. We welcome the introduction of a specific digital data and technology team which will focus on assessing various new ways to understand and analyse big data. We also note the intention to use interim measures to regulate fast-moving tech.

Finally, we support the CMA’s intention to address issues around algorithms and concerns of collusion and price discrimination. This is an important issue and we look forward to seeing more detailed discussion/analysis on the topic.

## Funding

“We will also continue to make important investments in the coming year to ensure that our capacity and capabilities match our ambitions.

Resourcing the CMA for activities following the UK’s exit from the EU is a key part of our planning process. To enable us to continue preparations, we have secured additional funding from HM Treasury in the 2017/18 financial year.”

Some indication of the level of funding anticipated would be helpful. We also note that this commitment follows the statement in 7.1 that the finance arrangements put in place are representing an estimated reduction over the four years of 7% in real terms.

## Impact assessment

We are concerned that there appears to be no substantive assessment of the following issues:

- The impact of Brexit on the future operating model and current activities;
- The criteria for deciding upon priorities, 7.4.

## Collaboration with other regulators

The lack of information on interlocking activities with other sector competition regulators is disappointing particularly in the context of Brexit. For example vulnerable customers are very high on the FCA agenda. Ofcom's consultation on their 2018/19 plan mentions protecting consumers from harm, notably vulnerable customers. In our view, this would be an obvious area to coordinate work and so manage scarce resources across a number of each regulator activities. It would also demonstrate planning and matching capacity to ambition.

Online and digital markets are another area of obvious common interest and activity for competition regulators – algorithms for example, behaviour and pricing.

**For further information, please contact:**

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