

## UNCTAD IGE (Intergovernmental Group of Experts)

Thursday 8 July

### Session 6: Voluntary Peer Review

***We understand that the UK Competition and Markets Authority (CMA) is entrusted with the responsibility of enforcing Competition Law and Consumer Protection Law under one roof. We would like you to share your enforcement experience in these two areas of law. Given your experience, which model would you recommend for a developing country like Malawi which has a small agency? Do you think competition agencies should be given a general mandate of consumer protection in addition to enforcement of competition law, and what are the benefits or challenges?***

#### **Share your enforcement experience of doing consumer and competition together**

- We are aware that different jurisdictions take different approaches to their competition and consumer protection law enforcement and I wanted to answer this question by offering a perspective from the UK/CMA.
- In the UK, the Competition and Markets Authority (CMA) is the UK's lead competition and consumer authority and our primary duty is to promote competition, both within and outside the UK, for the benefit of consumers. In 2021, the CMA has around 850 employees working across a range of functions (I can share a note with what those functions are after today).
- The CMA began fully operating on 1 April 2014 as part of wider landscape changes across the UK. The CMA was formed by the coming together of the [Competition Commission](#) and the [Office of Fair Trading](#) but not all functions were carried over from our merger (e.g. consumer credit licensing).
- Under [Part 8 of the Enterprise Act 2002](#), bodies responsible for consumer law enforcement, including the CMA, have powers to seek court orders against businesses that breach a range of specific laws, including consumer protection legislation (I will share a note afterwards summarising relevant laws if helpful from the information we have already put in the public domain).
- As such, the CMA enforces consumer and competition law alongside other enforcers in the UK. This will be important when considering or designing a regime that works in a jurisdiction. If I was setting up a regime, the questions I would be thinking about are whether there are other enforcers alongside ours (for example responsible for consumer protection, product safety, specific sectors)? How can I work with them? Where do I sit alongside them? How can I build up links with them?
- *In terms of UK enforcement experience, case study summary... funerals [1 min]*

The Funerals Market Investigation Order (2021) ([here](#)) implements a number of integrated remedies following the Funerals Market Investigation. The investigation identified low levels of customer engagement caused by intrinsically challenging circumstances surrounding the purchase of a funeral, high barriers to entry in the supply of crematoria services and high levels of local concentration in the supply of crematoria services.

The Inquiry Group decided to address the adverse effect on competition (AECs) and resulting customer detriment through an integrated package of remedies. This included a requirement on all funeral directors and crematorium operators to disclose certain price information to customers (Consumer remedy). And, a prohibition on all funeral directors from

entering into or conducting certain arrangements with a hospital, hospice, care home, or other similar institution which could reasonably be understood to encourage, incentivise or require the institution to refer customers to the funeral director or give that funeral director preference over other funeral directors and soliciting for business through coroner and police contracts.

The Funeral Market Investigation Order went further and required some funeral directors and all crematorium operators to provide the CMA with specific price and volume information on the goods and services that they provide to customers to assist the CMA in the monitoring of the funeral sector.

### **Given your experience, would we recommend?**

- A wide range of enforcement instruments means the CMA can take a holistic approach to tackling harms in any chosen market.
- Issues such as how markets respond to the Covid-19 crisis, coordinating interventions with our international partners and the growth of digital markets are all challenges where a holistic approach will strengthen our intervention.
- Our markets regime operates alongside our consumer and competition enforcement regime. It allows us to look at competition and consumer issues when exercising our markets tools and functions. It means we can choose the appropriate tool in our toolkit – whether that is competition or consumer – to tackle the harm.
- *Case study: online platforms and digital advertising [1 min]*

### **Case study: digital markets**

We published our Digital Markets Strategy ([here](#)) to bring together the full range of our work related to digital markets. The themes from that Strategy will continue to guide our work this year. These include using our full range of powers to tackle problems in digital markets; developing our data science and engineering capability; reviewing how we approach mergers in digital markets; undertaking policy work to advise government on the possible regulation of digital platforms; as well as working with colleagues internationally in light of the global nature of many digital platforms.

We have already used our consumer protection powers successfully to tackle harmful practices relating to hotel online booking, social media endorsements, online gambling and online dating services, and intend to continue our work to ensure that consumers are not misled by fake reviews or exploitative online choice architecture, or fall victim to subscription traps.

A key part of our Digital Markets Strategy was the launch of a market study into online platforms and digital advertising ([here](#)). This investigates the market power of digital platforms in consumer-facing markets, the lack of consumer control over data, and competition in the supply of digital advertising.

- In terms of managing people in an organisation, both our consumer protection enforcement and competition law enforcement teams may carry out raids, issue

information notices or conduct economic analyses about harm. Multiple competences in different regulatory areas helps the CMA achieve efficiencies and lowers the costs of enforcement and coordination of policies – so it improves our performance against the framework for which we are measured.

- Effective consumer policies, which enhance the capability of consumers, serve as the basis for the virtuous cycle of promoting consumer welfare and increasing competitive pressure among businesses.

### **Do you think competition agencies should have a general mandate?**

- The CMA has been given its powers to enforce consumer and competition law from UK government Ministers. We must enforce consumer and competition law in line with the CMA's performance framework and report on our performance on an annual basis (I can link to our latest report and share this afterwards for how this works).
- This performance framework makes our work accountable to UK government and to the public and it helps us to take decisions as an organisation.
- The UK CMA has a complex enforcement model – there are administrative and criminal aspects of competition law enforcement, a prosecutorial model for consumer protection enforcement and we operate a voluntary mergers regime – and we enforce consumer and competition law alongside other enforcers.

In conclusion, this does not necessarily mean that if an enforcement regime works well under one roof in one jurisdiction that the same models can work equally well in another jurisdiction. When determining whether competition agencies should have a general mandate, it is important to consider the landscape in which the authority is operating and in particular, its relationship with other enforcers.

If I could leave you with one message, in the UK CMA, having a variety of tools means that we can choose the right tool(s) for addressing the harm with a view to our primary duty of making markets work for consumers.