

FCA Mission: Our Approach to Competition

BSA Response
9 March 2018

 **Building Societies**
Association

Executive Summary

- We understand the FCA's competition remit generally, and its concurrent regulatory status with the Competition and Markets Authority and the Payment Systems Regulator.
- Broadly speaking, our view is that UK financial services has good levels of competition across core areas, but competition is not as strong in certain niches (eg payday and SME lending) or elements (eg National Savings and Investments, some price comparison websites, and prudential mortgage regulation).
- The BSA strongly welcomes the FCA's statement that *"As a competition regulator our primary role is not to regulate prices or profitability directly."* Apart from where there are specific legislative requirements, we believe that there is very little place for price regulation in a democracy and in an industry that is competitive and properly conduct regulated. We believe that regulators need to be very alert to unintended consequences, and to be cautious about actions they take that might indirectly affect prices.
- As the FCA acknowledges, competition is complex and no single benchmark can measure how effectively it is working. As the BSA has consistently stated over a long period, having a diverse range of providers helps make competition more effective due to providers operating with different incentives and goals, so they compete to win and serve customers in different ways. Corporate diversity can spur innovation and greater consumer choice, and we believe that the FCA should look at measures of corporate diversity, such as a diversity index.
- In terms of competition law enforcement, we believe that regulators should reserve the most stringent enforcement action for cases where there is consumer detriment (especially if it is of a significant nature) or cases where the breach is intentional rather than inadvertent.
- The BSA fully supports the FCA's statement that it will *"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."* We welcome the FCA's confirmation that it will be transparent about the success or failure of its remedies. We also welcome the thoughtful and measured tone in the [FCA Director of Competition's speech](#) on 27 February.

Responses to FCA questions

Question 1

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?

- **The FCA's competition role**

We understand the FCA's broad competition remit, and its concurrent regulatory status with the Competition and Markets Authority (CMA) and the Payment Systems Regulator (PRA). As explained in our response to the FCA's earlier Mission consultation (on approach to consumers), the BSA believes that the FCA should predicate intervention upon a number of components, a key one of which is a competitive, transparent marketplace.

Further, the BSA supports the FCA's acknowledgement that its competition remit is not only about pricing and switching, but also involves supporting consumer choice, keeping markets open to entry and innovation, and tackling anti-competitive conduct.

We acknowledge the FCA's role in supporting innovation and, while we applaud the promotion of new and innovative players, we believe that regulators should not provide them with a degree of support that proves to be anti-competitive in respect of established firms and the market generally. In relation to competition, there has to be a reasonable balance and we are pleased that the FCA acknowledges this general point (*'striking the right balance across our objectives'*).

In terms of getting the balance right on supporting new entrants, a key consideration is the timescale over which the FCA assesses competition and whether it is sustainable. This is a matter that we explore in our response to the FCA regarding banking the business models.

As indicated by the CP, there has to be a sensible balance between consumer protection, market integrity and financial stability.

In terms of 'what good looks like', we agree with the fundamental points that the CP makes in relation to confident consumers able to exercise choice, firms winning business by making the best offer, no undue barriers to entry, freedom and flexibility to develop new products, and TCF.

As the BSA has consistently stated over a long period, having a diverse range of providers helps to make competition more effective due to providers operating with different incentives and goals, so they compete to win and serve customers in different ways. Corporate diversity can spur innovation and greater consumer choice, and we believe that the FCA should look at measures of corporate diversity, such as a diversity index – there is detailed information [here](#).

We note that, following a period when the FCA's work was largely of a market study nature (under the FSMA), the FCA has moved towards investigation and enforcement (under the Competition Act 1998 and the Enterprise Act 2002).

Broadly speaking, our view is that UK financial services has good levels of competition across core areas, but competition is not as strong in certain niches (eg payday lending, and SME lending) or elements (eg National Savings and Investments, some price comparison websites, and prudential regulation of mortgages).

We noted in our recent response to the FCA Mission consumer CP that aggravating factors include a complicated framework of horizontal and vertical consumer rights, consumer lack of awareness of their rights and responsibilities and, nowadays, the reduced availability of advice.

- **Price regulation**

The BSA strongly welcomes the FCA's statement that *"As a competition regulator our primary role is not to regulate prices or profitability directly."* The CP notes that there are rare occasions when the FCA might intervene on price.

The BSA firmly believes that such occasions should indeed be rare such as when there is a clear statutory requirement. This happened with [payday lenders](#) – Financial Services (Banking Reform) Act 2013, which amended the FSMA), [default pension auto enrolment charges](#) (Occupational and Personal Pension Scheme Regulations 2013), and [pension early exit charges](#) (Bank of England and Financial Services Act 2016, which also amended the FSMA).

Apart from where there are specific legislative requirements, we believe that there is very little place for price regulation in a democracy and in an industry that is competitive and properly conduct regulated. Indeed, where such conditions exist, price regulation could be counter-productive and prone to unforeseen consequences because it could undermine the effective operation of supply and demand in a relevant market. There are many historical examples, for instance in relation to the rented sector.

More recently, we have seen the unintended consequences of certain well-meaning regulatory interventions (eg the Retail Distribution Review), and the potential ramifications of such initiatives need to be thought through in advance, with those considering putting such initiatives into practice heeding reasonable warnings.

The FCA should also be aware of regulatory actions that have the effect of price regulation, even if they do not set prices directly.

Therefore, in our view it is imperative that any proposals for price regulation are thought through and examined very carefully indeed.

Question 2

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

- **General indicators**

As the FCA acknowledges, competition is complex and no single benchmark can measure how effectively it is working. We broadly agree with the list of indicators of weak competition set out on page 12 of the CP; namely –

- concentration
- barriers to entry and growth
- integrated supply chain
- barriers to switching
- price discrimination
- lack of access to information
- sustained excessive profitability
- complexity.

However, as the CP correctly points out, such indicators or characteristics do not necessarily mean that there is anti-competitive behaviour or rule breach. In addition, lack of switching does not necessarily arise from the existence of barriers. There are often other factors, including customers who are satisfied with their product and provider.

Equally, a customer might remain with a product because of inertia. We recognise that this is a poor outcome and that firms, and as appropriate regulators, should address the matter if it is the result of anti-competitive behaviour, other rule breach, poor TCF, customer vulnerability, lack of transparent information etc. We also believe that consumer financial education should be better than it currently is, and that consumer rights could be clearer than they currently are.

However, ultimately, in a free society a customer has the right to stay with a product even if it does not provide best financial value. A genuine exercise of freedom of choice should not be regulated away.

Regarding the point on lack of access to information, where a firm provides conflicting information to customers (eg where there is inconsistency in information provided in marketing material, disclosure documents, T & Cs etc), this can have an anti-competitive affect. The reason is that consumers might be misled by positive and yet inaccurate information that leads them to choose the provider over one that has consistent and accurate information.

A key mitigant is strong, consistent, and proportionate enforcement not only of conduct of business rules but also legislation concerning consumer rights, unfair commercial practices etc, especially where consumer detriment is evident.

We agree with what the CP says about anti-competitive conduct, and we support the FCA's prioritisation of its work (both matters set out on page 13 of the CP).

- **National Savings and Investments**

The CP asks about other anti-competitive indicators and, in that context, we feel compelled to refer to National Savings and Investments. Unfair, and sometimes unpredictable, competition from NS&I has been a recurring concern over many years.

NS&I enjoys privileges unavailable to private sector participants in the UK cash savings market; notably, the 100% Government guarantee applicable to its products, and its ability to offer certain products that are not available to the private sector. Furthermore, NS&I has not participated in Government initiatives, such as the Help to Buy ISA, embraced by its private sector competitors. Therefore, it is not burdened by the associated delivery costs. In addition, the remedies in the FCA's Cash Savings Market Study did not apply to NS&I.

However, NS&I is exempt from FCA regulation and while it "aims to comply with FCA requirements where applicable and appropriate on a voluntary basis", it is able to avoid, for example, the compliance burden associated with the 7-day cash ISA transfer target agreed by building societies and banks. While NS&I continues to enjoy such anti-competitive privileges, we cannot truly say that we have a fully competitive financial services marketplace in the UK.

- **Price comparison websites**

Another area of concern is price comparison websites (PCWs). These online tools can provide invaluable help to consumers in navigating financial services products, and it is clear that a great many consumers benefit from using them. However, where they provide incorrect, inconsistent or incomplete information they can operate as a barrier to competition. There have been many studies of, and regulatory exercises relating to, PCWs over the years; for example –

- FSA finalised guidance on the selling of general insurance policies through PCWs (2011) [here](#)
- FCA TR/14: PCWs in the general insurance sector (2014) [here](#)
- PS16/15: consumer credit: proposals in response to the CMA's recommendations on high-cost short-term credit (2015), which included rules for PCWs on relevant products [here](#)
- FS16/10 *smarter consumer communications* (2016), which considers PCWs among other things [here](#)
- UK Regulatory Network: PCWs final report (2016) [here](#)
- CMA digital comparison tools market study (2017) [here](#)
- FCA mortgages market study, which includes a component on PCWs (ongoing) [here](#).

We understand that PCWs are subject to various legal provisions, including the Consumer Protection from Unfair Trading Regulations 2008. However, except where special rules mandate regulation (as in the case of payday lending products – see above) they are regulated directly by the FCA only if they undertake a regulated activity, such as insurance mediation or credit broking, when they will be subject to certain conduct of business rules and FCA Principles.

Therefore, the overall picture on PCWs seems to be very piecemeal. We recently referred a particular PCW to the FCA because, among other things, it did not appear to present transparent information about FSCS cover. Perhaps it is time to examine whether PCWs that provide information to consumers about financial services products should be bound, like regulated financial services firms, to provide information to consumers that meets regulatorily mandated standards.

- **Mortgages**

We recognise that the CP is of a general nature and does not focus on specific product areas and, in any case, the BSA is engaging separately with the FCA on its mortgages markets study. Therefore, we simply refer to the fact that our response to the FCA's *call for inputs on barriers to competition in the UK mortgage market* (2016) [here](#) referred to a number of concerns, in particular –

- the anti-competitive application of the PRA's Building Society Sourcebook (now included in Policy Statement 34/16 *Supervising building societies' treasury and lending activities*)
- the challenge for lenders having, in some instances, to manage contradictory rules, and

- the disruption created by repeated regulatory changes and contradictory judgments.
- **Retail banking business models**

We are also engaging separately with the FCA on its strategic review of banking business models, within which is a strong competition component.

Question 3

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

We note the FCA's description of how its diagnostic tools work (ie calls for input and market studies). Clearly, there is a logistical pressure on firms included in market studies. Therefore, we believe that it is important for the FCA to examine and scrutinise very carefully the kind of indicators outlined earlier in the CP, and the outcomes of any relevant any call for input, before launching a market study.

However, we observe that, although the outcomes varied, all six market studies completed by the FCA so far led to packages of remedies of one form or another. This is a good indicator that the FCA chose wisely in its decision to launch the studies.

Regarding enforcement and subsequent courses of action, we note and acknowledge the description of the FCA's powers set out in Chapter 2 of the CP. We acknowledge that mitigants or solutions drawn from behavioural psychology can have a place, as explained on page 19 of the CP.

We believe that regulators should reserve the most stringent enforcement action for cases where there is consumer detriment (especially if it is of a significant nature) or cases where the breach is intentional rather than inadvertent.

Question 4

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?

Yes, we are content that the CP sets out the FCA's approach to competition clearly.

The BSA fully supports the FCA's statement that it will *"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."*

We welcome the FCA's confirmation that it will be transparent about the success or failure of its remedies. We also welcome the thoughtful and measured tone, relating to FCA competition policy and price regulation, in the [FCA Director of Competition and Chief Economist's speech at the Social Market Foundation on 27 February 2018](#), which the BSA attended.

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The Building Societies Association (BSA) is the voice of the UK's building societies and also represents a number of credit unions.

We fulfil two key roles. We provide our members with information to help them run their businesses. We also represent their interests to audiences including the Financial Conduct Authority, Prudential Regulation Authority and other regulators, the Government and Parliament, the Bank of England, the media and other opinion formers, and the general public.

Our members have total assets of over £387 billion, and account for approximately 20% of both the UK mortgage and savings markets