

13 January 2014

Item 1

The Competition and Markets Authority (CMA)

Purpose

Lord Currie, Chair designate of the CMA, will be attending the January board meeting ahead of the CMA's formal establishment on 1 April 2014. This is an introductory session to discuss the role of the CMA and how it can engage with councils to deliver its regulatory responsibilities on consumer law. A biography for Lord Currie is included at **Appendix A**.

Summary

The Government announced plans to create the CMA in March 2012, with the aim of making it a leading worldwide authority responsible for performing the competition functions originally assigned to the Office of Fair Trading and Competition Commission. These functions include tackling anti-trust activity, price-fixing, and mergers and monopolies issues.

Recommendation

For information and discussion.

Action

Officers to progress as directed.

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The Competition and Markets Authority (CMA)

Background

1. Lord Currie was appointed designate of the Competition and Markets Authority (CMA) in July 2013, and the CMA will begin operating in April 2014. The chief executive designate, Alex Chisholm, was announced on 8 January 2013.
2. Lord Currie has been very clear that the CMA should play a greater role in enforcing consumer law by establishing close relationships with citizens and trading standards, suggesting that empowered consumers could be the key to encouraging growth.
3. The CMA has inherited the OFT and Competition Commission's competition toolkit and consumer protection enforcement powers. It will also have the power to tackle practices and market conditions that make it difficult for consumers to exercise choice in an otherwise competitive market. It does not have direct responsibility for financial products (such as payday loans companies) as the OFT's consumer credit responsibilities are being transferred to the new Financial Conduct Authority.

Engagement with the LGA

4. Lord Currie has previously met Sir Merrick Cockell and Carolyn Downs, on separate occasions, to discuss the CMA's developing role and connections with councils.
5. As well as an introduction to our 'Open for Business' and 'Vision for local regulation' work, these discussions focused on competition issues that councils need to be mindful of as both suppliers and purchasers of services.
6. As councils become more commercial, there is a need to guard against anti-competitive policies and practices. Lord Currie has cited academy trusts becoming too dominant in an area as a practical example. Another potential issue is around procurement policy; for example councils choosing to tender to local SMEs could potentially be challenged. The upshot of this discussion was that councils need to take advice at an early stage to avoid significant legal challenges later.

Councils' role in consumer law and links to other agencies

7. Consumer protection enforcement is delivered:
 - 7.1. Locally, by individual council trading standards services (e.g. underage sales, local scams, pricing in shops).
 - 7.2. Regionally, by groups of councils choosing to work together (e.g. dealing with cross border rogue traders, illegal money-lending). The new National Trading Standards

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Board (NTSB) has taken on the structure, governance and funding to support regional trading standards work by councils in response to national and regional threats such as e-crime. These responsibilities were in part transferred from the OFT by the same legislation that established the CMA. Lord Currie has met with the NTSB to discuss their work and direction.

7.3. Nationally, by the Office of Fair Trading (OFT) / CMA from April 2014.

8. In addition, the Citizens Advice consumer service took over responsibility for providing consumer advice and information from Consumer Direct on 1 April 2012.
9. All of these elements have to be working effectively together to provide the levels of protection that local communities need. To help achieve this, the has established a Consumer Protection Partnership (CPP) with membership from the NTSB, Trading Standards in Scotland and Northern Ireland, the Office of Fair Trading (and subsequently the Competition and Markets Authority), the Regulated Industries Unit and the Citizens Advice service. It shares intelligence, identifies future issues that could adversely affect consumers and agree priorities for enforcement, information and education. It also provides regular reports to the Minister for Consumer Affairs to provide accountability on how the system as a whole is delivering for consumers.
10. The focus for the CPP over the coming year is on e-crime, doorstep crime, and mass-marketing scams. It has already created a definition of 'consumer detriment' and taken visible action to improve the second-hand car market. However, it is not yet fully embedded and needs to maintain this visibility and deliver practical improvements if it is to succeed.

Suggested points of discussion

11. Council engagement

- 11.1. It is important that the CMA establishes effective local relationships ahead of becoming operative if it is to deliver effectively from April 2014. **What progress does Lord Currie feel has been made and can we provide any additional support?** The LGA would be happy to help the CMA communicate its new role and intended ways of working through First magazine and the Safer Communities e-bulletin.

12. Council commercial services

- 12.1. Councils are actively seeking to deliver public services in cost-effective and efficient ways. In light of reducing budgets, this can mean entering markets as a direct service provider, or taking on a market-shaping role to achieve improved services. This work is developing rapidly and across all service areas, placing a high-level of demand on a relatively small skill-base within councils. The LGA has published guidance to assist councils as they develop their activities, which includes explicit guidance on competition law. **We would be happy to publicise**

any further advice and support that the CMA might be able to offer on this complex matter.

13. Draft Consumer Rights Bill

- 13.1. The draft Consumer Rights Bill proposes that, with certain exemptions, trading standards teams be required to give businesses at least two working days notice before exercising the power to enter premises without a warrant. We support the aims of the Bill and continue to promote the importance of advance notification of inspections when working with the vast majority of responsible businesses. We believe that most councils already seek to operate in this way.
- 13.2. However, we share the concerns of the TSI that the exemptions as currently drafted will restrict trading standards ability to make unannounced inspections of high risk premises, or where there is evidence of a local or national risk linked to a certain business type rather than to a specific business premise.
- 13.3. The BIS committee report on the Draft Bill supports the evidence given by TSI and LGA, arguing that the Draft Bill risks introducing '*unnecessary and undesirable uncertainty...[and] placing an undue burden on enforcers which could decrease protection for consumers and compliant businesses.*' It has recommended that government redraft the exemption.
- 13.4. **Is the CMA aware of this issue and does it agree that government should look again at this issue?**

14. Consumer protection and pricing mechanisms

- 14.1. Councils are increasingly working in partnership with businesses to address certain public duties such as public health, as is central government through initiatives such as the Responsibility Deal to reduce alcohol harm. Businesses are in a strong position to make a significant contribution to tackling local issues such as street-drinking or related anti-social behaviour. For instance, retailers in Ipswich have voluntarily agreed to remove high-strength alcohol products that have been directly and routinely linked to anti-social behaviour outside their stores and in the town centre more generally.
- 14.2. However, increasingly some sectors of industry are becoming unsure about the extent to which competition law permits such voluntary agreements on pricing and supply, and this is threatening some very positive initiatives. **We would value the assistance of the CMA in helping councils to explore the options for addressing consumer protection and public health objectives without coming into conflict with competition law.**

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15. Payday loans companies

- 15.1. Councils are increasingly concerned about the impact of payday loans companies on the most vulnerable in society. A number of councils are taking action to restrict advertising through council websites and advertising boards, while others are promoting local credit unions as a more suitable source of finance. However, there is a view that more needs to be done. **The new Financial Conduct Authority will be directly responsible for payday loans, but does Lord Currie see a role for the CMA in this area?**

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Appendix A

Lord Currie Biography

David Anthony Currie is a British economist and a cross bench member of the House of Lords.

Following the News International phone hacking scandal, Currie was appointed to the advisory panel of the Leveson Inquiry into the culture, practices and ethics of the British press, on 20 July 2011.

Lord Currie has previously chaired the Better Regulatory Outcomes Group, which brings together all regulators to provide guidance and direction to the Better Regulation Executive. Cllr Mehboob Khan attends this group on behalf of the LGA.

Lord Currie famously compared regulators to drains: "If you notice them, then there is a problem".