

Title: A Competition Regime for Growth IA No: BIS0238 Lead department or agency: Department for Business Innovation and Skills Other departments or agencies:	Impact Assessment (IA)		
	Date: 15/09/2011		
	Stage: Final		
	Source of intervention: Domestic		
	Type of measure: Primary legislation		
	Contact for enquiries: James Jamieson 0203 7915 0110		
Summary: Intervention and Options			RPC: RPC Opinion Status

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, One-Out?	Measure qualifies as
£11.4m	-£12.8m	£0.14m	Yes	IN

What is the problem under consideration? Why is government intervention necessary?

The UK competition regime is highly regarded internationally and independently assessed as world class. There are however, some aspects of the competition regime, identified by research, that might be improved to enhance the system. They include the length of time it takes to conduct investigations, the cost for authorities and businesses in having two competition bodies, the throughput of antitrust cases and the problems associated with investigating completed merger cases. Ensuring the regulatory framework within which business operates is effective, is a key action the Government can take to enhance the UK's international competitiveness and support economic growth.

What are the policy objectives and the intended effects?

Three main policy objectives have been identified. These are:-

- 1) Improve the robustness of decisions and strengthen the regime;
- 2) Support the competition authorities in taking forward the right cases;
- 3) Improve speed and predictability for business.

The intended effects are to strengthen the existing competition regime to support growth in the economy.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

A number of options have been considered to reform the UK competition institutional landscape and to improve the competition tools. The Evidence Base (and relevant annexes) sets out all these options in detail.

Each summary sheet option that follows sets out the governments preferred options (except for anti-trust)

Of the major reform options, creating the CMA from the merger of CC and the competition functions of OFT is the preferred option as this will best meet the policy objectives. In particular, by merging the two bodies we would anticipate more efficient resource allocation and a strengthened competition regime should deliver wider economic benefits through restricting and deterring anti-competitive behaviour. The reform to other areas is explained further in the main analysis

Will the policy be reviewed? It will be reviewed. If applicable, set review date: 04/2018					
Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.		Micro No	< 20 Yes	Small Yes	Medium Yes
What is the CO2 equivalent change in greenhouse gas emissions? (Million tonnes CO2 equivalent)			Traded:		Non-traded:
			N/a		N/a

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister: _____ Date: _____

Summary: Analysis & Evidence

Policy Option 1

Description: Create the CMA by merging the competition functions of the OFT and CC

FULL ECONOMIC ASSESSMENT

Price Base	PV Base	Time Period	Net Benefit (Present Value (PV)) (£m)		
Year 2011	Year 2013	Years 10	Low: 13.0	High: 39.0	Best Estimate: 13.0

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	2.4	0	3.7*
High	5.8	0.2	5.8
Best Estimate	5.8	0	5.8

Description and scale of key monetised costs by 'main affected groups'

Creating the CMA will involve transition costs incurred by Government including redundancy costs, contract exit costs, IT, moving staff and equipment, branding and project management costs. Transition costs of past government reorganisations have been underestimated so a 20% optimism bias is applied to calculate the high and best estimate. *Total costs (low) is a combination of the low transition costs and the high average costs due to the scenario in which they both occur.

Other key non-monetised costs by 'main affected groups'

Other transition costs may arise from the uncertainty the merger may create, including key staff leaving the organisation and a lowering of staff morale, which may weaken the effectiveness of the body during the transition period. There may be additional costs of harmonising staff pay.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low		2.2	18.8
High		5.0	42.7
Best Estimate	0	2.2	18.8

Description and scale of key monetised benefits by 'main affected groups'

Creating the CMA would result in annual benefits to Government arising mainly from accommodation, staffing and back office savings. However, the OFT and CC are required to make significant savings to meet their 2010 Spending Review settlements and the merger savings are not expected to exceed those required by the SR. Rather, the merger is a way to achieve these savings more efficiently. Past reorganisations have overestimated benefits so the best estimate is equal to the low estimate.

Other key non-monetised benefits by 'main affected groups'

Merging the two bodies, should lead to more efficient resource allocation, as the CMA would be able to better balance the portfolio of work across the regime as a whole and reduce some duplication of activities.

Key assumptions/sensitivities/risks

Discount rate (%) 3.5

The low estimate of benefits assumes the CMA is located at Fleetbank House and the newly vacant space in Victoria House can not be sublet. The high estimate assumes the CMA is located at Victoria House and the newly vacant space at Fleetbank House is sublet, but costs occur in year 7 when the lease at VH expires and the CMA relocates. The benefits are sensitive to the future state of the property market. The UK competition regime is recognised as world class and reform risks weakening it.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: 0	Benefits: 0	Net: 0	No	NA

Summary: Analysis & Evidence

Policy Option 2

Description: Mergers - Strengthen Interim measures, introduce a small business exception for small mergers, introduce statutory timeframes

FULL ECONOMIC ASSESSMENT

Price Base Year 2011	PV Base Year 2013	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: -1.2

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low			
High			
Best Estimate	0	0.1	1.2

Description and scale of key monetised costs by 'main affected groups'

There would be a cost to business of £140k from the introduction of information gathering powers at phase 1. This is due to not all third parties replying to information requests at present.

Other key non-monetised costs by 'main affected groups'

Strengthened interim measures mean that certain notifying business that have already completed take on additional risk from completing the deal where competition issues are likely to be raised and risk fines for not complying with authorities.

There may be a small loss of deterrence of anticompetitive mergers below small business threshold although given the number and size of mergers affected, this is likely to be low.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low			
High			
Best Estimate	0	0	0

Description and scale of key monetised benefits by 'main affected groups'

Through strengthened interim measures, there should be significant benefits to UK economy from reducing harm from notified completed mergers which are found to be anticompetitive.

Other key non-monetised benefits by 'main affected groups'

The main benefits from the various reforms are that more problematic mergers will be notified before completion meaning less harm from these mergers and remedies will be easier to implement. There will be greater certainty for mergers involving small businesses as they will no longer be required to consider notifying and there will be greater certainty of timing for overall merger regime, including introducing remedies quicker which benefits both the relevant business and the economy as a whole

Key assumptions/sensitivities/risks

It is assumed that 1/3 or third parties already respond to information requests. It is also assumed that information gathering powers will not be used on every investigation. Existing information gathering powers in phase 2 are not always used, even though they are currently available.

The key risk is that there would be the potential for more type I and type II errors when mergers are referred to phase 2

Discount rate (%) 3.5

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:	In scope of OIOO?	Measure qualifies as
Costs: 0.14	Yes	IN
Benefits: 0		
Net: -0.14		

Summary: Analysis & Evidence

Policy Option 3

Description: Anti-trust - Move to a prosecutorial model where OFT/CMA present a case to court and CAT adjudicate on the evidence

FULL ECONOMIC ASSESSMENT

Price Base Year 2013	PV Base Year 2013	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:
COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Cost (Present Value)
Low					
High					
Best Estimate					
Description and scale of key monetised costs by 'main affected groups'					
The modelling exercise showed that there are likely to be significant transition costs on the competition authority and businesses whilst the system settles and increased costs for running the CAT as it has a more central role in adjudicating all cases. However the modelling is illustrative rather than definitive. See annex H for further information on modelling					
Other key non-monetised costs by 'main affected groups'					
Other potential costs are that parties may settle too quickly or reduced settlements will lead to more costs for the authority.					
BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Benefit (Present Value)
Low					
High					
Best Estimate					
Description and scale of key monetised benefits by 'main affected groups'					
Modelling exercise showed the potential for overall savings, including savings to business and competition authority. However, as above the modelling is considered illustrative rather than definitive. Full analysis is in the evidence base and Annex H.					
Other key non-monetised benefits by 'main affected groups'					
Separation of prosecutor and adjudicator would lead to more robust decisions. Making the CAT the arbiter will remove a stage of the process, reducing the end-to-end timescales and reducing the average length of time for all cases.					
Key assumptions/sensitivities/risks					Discount rate (%)
We assume the rate of settlements will increase, appeals to a higher court will tend to zero and a transition period of 5 years as the system settles. Main sensitivity is the costs for business defending cases and the number of settlements and further appeals. Main risk is prosecutions will take much longer than anticipated, and parties will challenge the CMA process and CAT decisions, although the presence of CAT and design of it's rules should mitigate this to an extent.					3.5

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: N/A	Benefits: N/A	Net: N/A	No	NA

Summary: Analysis & Evidence

Policy Option 4

Description: Markets - Shortening overall process for Market studies and Market investigations and allowing investigations into practices across markets and the ability to make independent reports to Government

FULL ECONOMIC ASSESSMENT

Price Base Year 2011	PV Base Year 2013	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)			
			Low: Optional	High: Optional	Best Estimate: 0	
COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Cost (Present Value)	
Low						
High						
Best Estimate	0		0		0	
Description and scale of key monetised costs by 'main affected groups'						
Information gathering powers in phase I could increase costs to business, but much of this information is gathered presently and the power is to ensure that the authority can comply with statutory timetables to increase the speed of cases rather than to be requiring new information that isn't gathered in phase I now. Therefore the additional cost to business is expected to be 0.						
Other key non-monetised costs by 'main affected groups'						
Competition authority may have to prioritise markets work over other areas without statutory timescales, or reduce the amount of effective markets work, leading to worse outcomes for consumers and the economy.						
BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Benefit (Present Value)	
Low						
High						
Best Estimate						
Description and scale of key monetised benefits by 'main affected groups'						
Other key non-monetised benefits by 'main affected groups'						
Cases can be conducted quicker and there will be increased certainty about the timescales involved, potentially having remedies implemented up to 12 months earlier. There would be less duplication of information requests between phase I and phase II. Ability to investigate practices across markets and for CMA to provide independent reports will reduce duplication workload in appropriate circumstances, and enable the markets tools to be more targetted and used more flexibly.						
Key assumptions/sensitivities/risks					Discount rate (%)	3.5
We have assumed that there would not be a significant additional burdens on business from complying with statutory information request. Businesses provide information to OFT already and phase II currently has statutory information gathering powers, although these are not used frequently. Risks include possibility that decisions are less robust because of increased speed of cases, leaving the possibility of legal challenge.						

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: 0	Benefits: 0	Net: 0	Yes	Zero net cost

Summary: Analysis & Evidence

Policy Option 5

Description: Criminal Cartels - Removing the 'dishonesty' element from the offence and defining the offence so it does not include agreements made openly

FULL ECONOMIC ASSESSMENT

Price Base Year 2011	PV Base Year 2013	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: -0.5

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low			
High			
Best Estimate	0	0.1	0.5

Description and scale of key monetised costs by 'main affected groups'

An additional case per year, with increased conviction rates will lead to increased costs of imprisoning offenders of approximately £55k a year.

Other key non-monetised costs by 'main affected groups'

Due to a lack of information, we have not been able to quantify the private costs of defendants legal costs. The court costs are not expected to increase, even with extra cases, as cases are anticipated to be processed more quickly. Authority costs are not anticipated to increase as authority should find it easier to bring cases and the costs per case should decrease.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low			
High			
Best Estimate			

Description and scale of key monetised benefits by 'main affected groups'

Other key non-monetised benefits by 'main affected groups'

Main benefits will be from an increase the deterrence of anti-competitive behaviour. Past reports on the deterrent effect of competition enforcement work of OFT estimated that current enforcement produces benefits that are at least 5 times those that are calculated directly in evaluation of direct action.

Key assumptions/sensitivities/risks

Discount rate (%) 3.5

We assume that there may be an additional case per year, but court costs and authority costs will not increase as the change in the definition of the offence will mean it will be easier to bring case, lowering the per case costs.

The main risk is that the change in definition may still not lead to improved enforcement and thus deterrence. In this case, there will be no additional costs or benefits from increased deterrence, although this risk is considered low.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs:	Benefits:	Net:	No	NA

Summary: Analysis & Evidence

Policy Option 6

Description: Concurrency - Introducing a package of measures to give CMA a more central role in the regulated sectors

FULL ECONOMIC ASSESSMENT

Price Base Year 2013	PV Base Year 2013	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:
COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Cost (Present Value)
Low					
High					
Best Estimate					
Description and scale of key monetised costs by 'main affected groups'					
Other key non-monetised costs by 'main affected groups'					
<p>May be some additional costs to regulators where they carry out more extensive competition analysis. There may be some costs if CMA takes a competition case from a sector regulator, including the uncertainty that this may produce for the regulated sector, although this would be mitigated by the CMA and sector regulators working more closely with one another. There may be costs for CMA if it is supporting sector regulators at the expense of its other case work.</p>					
BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Benefit (Present Value)
Low					
High					
Best Estimate					
Description and scale of key monetised benefits by 'main affected groups'					
Other key non-monetised benefits by 'main affected groups'					
<p>Benefits for both competition authority and sector regulators working together as they will be able access resources to help each other run more effective competition cases. Potential for greater deterrence of anti-competitive behaviour if competition tools are used more frequently in the regulated sectors. Better allocation of resources should follow from more secondments between the different bodies to deal with peaks and troughs of work.</p>					
Key assumptions/sensitivities/risks					Discount rate (%)
<p>Main risks are that competition tools are not as effective as sectoral powers in the long run or competition tools are used inappropriately. However, sectoral regulators will still have a choice of powers and can decide that competition tools may not be appropriate in all circumstances so will use the most appropriate tool.</p>					3.5

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: n/a	Benefits: n/a	Net: n/a	No	NA

Summary: Analysis & Evidence

Policy Option 7

Description: Telecoms cost Recovery - One way cost recovery where CC can reclaim costs from appellants and interveners but not from Ofcom

FULL ECONOMIC ASSESSMENT

Price Base Year 2013	PV Base Year 2013	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 0	High: 0	Best Estimate: 0

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low		1.2	10.3
High		1.5	12.8
Best Estimate	0	1.4	11.6

Description and scale of key monetised costs by 'main affected groups'

There will be costs to businesses if, when appealing Ofcom decisions, they lose and the CC considers it appropriate for costs to be recovered - although this would be a transfer from businesses to government. The size of cost will depend on the circumstances of the appeal, the cost of the case and the success of the case. In the evidence base, we estimate this to be between £1.2m - £1.5m a year.

Other key non-monetised costs by 'main affected groups'

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low		1.2	10.3
High		1.5	12.8
Best Estimate	0	1.4	11.6

Description and scale of key monetised benefits by 'main affected groups'

There will be an increase in costs recovered for CC's Telcom price control appeals work although CC will not receive the monies recovered to prevent perverse incentives on CC. This is equal to the costs that parties and interveners will pay. This is a transfer from business to government

Other key non-monetised benefits by 'main affected groups'

There may also be more considered approach to appeals by parties and interveners so only points of contention are appealed, leading to a more efficient appeal mechanism.

Key assumptions/sensitivities/risks

There may be a risk that the introduction of cost recovery disincentivises legitimate appeals, although giving CC panel discretion on the amount of cost recovery will enable the CC to consider whether a losing appeal was substantive or frivolous.

Discount rate (%) 3.5

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:	In scope of OIOO?	Measure qualifies as
Costs: 1.3	No	NA
Benefits: 0		
Net: -1.3		

