The CMA and FCA. What do we think of it so far?

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- UK Competition policy and the role of the two new UK regulators. Just how effective have they been since launch in April? Why reform the UK system at all?
- CMA and FCA objectives for 2014 and 2015 restated.
- An assessment of how the new regulators have landed, how effective are they in action so far and how good have their initial decisions been?
- The CMA’s first strategic assessment in 2014. What’s important?
- The FCA’s approach to advancing its objectives in 2014.
- How can corporates best prepare themselves for sectorial or company focus from both the FCA and the CMA.
- Some simple lessons and approaches that every legal adviser should be aware of.
- A 360 degree competition response to be the best prepared you can be to address competition risk, whatever the FCA or CMA focus might be from time to time. How to prepare for this and what do you have to think about to get it right first time?
- A quick comparison of both CMA and FCA websites- how effective and how usable are they so far?

Introduction – So why reform at all?
In any assessment of how these two new regulators are performing, it's necessary to consider why the Government bothered to reform the system at all and what was it trying to achieve. If a system is designed for a particular purpose, it’s always good to consider what that purpose is if you are also looking at how effective the changes have been and what they were trying to achieve. To demonstrate this it’s a good opportunity to quote a sketch from the famous Morecombe and Wise TV show in the late 1970’s when a Police emergency services siren is heard in the background in the studio (and which in those days was a two tone horn sound blaring loudly). Eric suddenly turns to Ernie and says; “They won’t sell many ice creams going that fast”!

Let's quickly look at what the issues were in the system as it existed and focus on what the new changes were trying to deliver and what might have been missed in the rush to reform so much of the competition regime all at once.

In March 2012, BIS published their response to the consultation that they had just run called Growth, Competition and the Competition Regime (Growth, Competition and the Competition Regime: government response to consultation. Ref BIS/12/512 published 15th March 2012). At the time, the key issues about the existing regime, which stemmed
from changes introduced in 2002 but essentially retained competition architecture in the UK that was decades old, were as follows:

- the whole market regime which involved market studies and market investigations meant that very often (and I've been on the sharp end of this a number of times as an in-house adviser, as have colleagues in other industries) there were duplicate closely timed requests for information and significant uncertainty in markets about specific outcomes, not helped by on-going press speculation on those outcomes over long periods.

  • in the merger regime, given its nature as a purely voluntary system, this can make it difficult both for regulator and competitors to deal with any anti-competitive effects.
  • the much publicised difficulties of securing successful prosecutions in a sensible time frame and for a sensible investigation and prosecution cost. The outcome is that in the time since earlier reforms, the precedents are inadequate and too few and decisions were probably too erratic in number and purpose.
  • the fact the regulators had to show clear dishonesty when bringing criminal cartel offences meant hardly any cases were actually brought.
  • issues around whether competition law has been sufficiently proactive in the regulated sectors.
  • the question of whether the regulators could better coordinate effort and deliver streamlined and consistent decision making.

There were obvious well known concerns as well, such that it almost goes without saying, around having two separate competition bodies (the OFT and the CC) and the obvious costs associated with that. So, what did they do?

The Government made 5 key recommendations (and has now implemented all of them) all of which were relatively far reaching in UK competition law terms and will serve as an example for other systems elsewhere of one way to try and build in more focus and coordination by regulators and yet address issues of rising costs. That's not to say the system adopted in the UK was primarily designed as a “cheaper” option but certainly its advocates would claim it does better focus resource on those areas where action is most needed. The recommendations were:

1) To set up the CMA and give it the established OFT and CC roles combined. As a result, the combined entity can investigate issues across markets and in the detail it wants.
2) To keep voluntary notifications on mergers but strengthen the system by allowing greater powers to suspend integration steps that are preemptive in both completed and anticipated mergers.
3) Address the issue around speed of investigations and decision making and address a multitude of issues around process and enforcement in areas such as entry to premises, action against those not complying with requests and in areas like interim measures.
4) Remove the need for dishonesty in cartel offences and allow participants to publish details before they are adopted so customers are aware.
5) Retain but improve the concurrency with sector regulators and improve the proactive stance of the CMA with those sector regulators in the face of a distinct lack of engagement from some sectorial regulators.

But something else was going on!
In my article in the IICJ in April 2014, I looked at how both the FCA and the CMA intended to use econometric research to assess more thoroughly than they have done before how consumer bias might impact decision making and how failing to do in the past may have rendered previous remedies from both competition investigations and market studies less than effective.

In November 2014, Martin Wheatley, CEO of the FCA at a Beesley lecture said;

"Where 10 years ago the solution to information asymmetry (between businesses and their customers) would have been more disclosure, today we try to devise policies based on how people have actually engaged with information. “ He also said: “Regulators devising remedies previously relied on "less sophisticated " tools like focus groups as compared to now where the FCA has tried to resolve demand side issues that customers may have with field testing, trials and data.”

In April in 2014, in this journal, I set out what the new powers of the FCA and CMA looked like in the competition space and how the FSA, which was a financial services regulator and not a competition one, was taking on a completely new competition role to promote competition in the interests of consumers (Volume 7, No.27, Spring 2014).

At the same time, in the case of the CMA, the “merger” of the old Office of Fair Trading and the Competition Commission into a unified UK competition regulator with combined powers to both review markets and manage mergers and conduct market studies has meant that the old regime has been swept away. It is to be replaced by a more focused set of bodies acutely aware of the significant difference competition intervention can make to the competitiveness of UK plc and to the protection of consumers and to their buying choices.

It’s obviously somewhat too early to give definitive views on how well these two bodies have responded to their new competition briefs. To try and make sweeping conclusions about that now would be shortsighted in such short a period of time. However, we can draw some lessons from what we have seen so far and make some useful comments about key developments since April 2014, when both bodies opened for business. It is also possible to apply these initial conclusions to assess how both bodies will behave in 2015 and beyond.

**CMA Key Objectives**

It’s worth revisiting and being clear on the key CMA objectives for 2014/15.

These are to;

- deliver effective enforcement,
- extend competition frontiers,
- refocus consumer protection
- deliver integrated performance, and
- achieve professional excellence.

In November 2014, the CMA set out its Priorities, Progress and Prospects for 2015 to inform its medium term priorities and to help the CMA focus its discretionary work. The risks and challenges that have so far been keeping the CMA busy and will continue to do so are;

- online markets and the digital economy,
- emerging sectors and business models and technology
- regulated sectors and infrastructure markets
It will also look for factors that may inhibit consumer's ability to access markets and their decision making. Moreover, it provides a view of markets which, given their economic significance, are of potential interest.

**CMA Strategic Assessment**

Alongside its Prioritization Principles, the CMA Strategic Assessment is being used to identify markets or issues that may be of particular interest as they display features that show competition problems and obviously provide the CMA with an opportunity to promote competition for the benefit of consumers.

In practice, this means the CMA is really looking for where it can have the greatest impact and add most value. When it does this it assesses whether they or others are best placed to address an issue and if they should work with partners to achieve that. When it comes to deciding what to deal with, one of these reasons will be relevant but one is usually enough;

- already identified as a strategic priority,
- a certain risk has already been identified in investigations,
- the potential for consumer harm insignificant (where the goods or services are essential, consumers are vulnerable or consumer bias is being or can be exploited),
- the market will become more significant,
- there are risks the market may not meet it full potential, or
- the market is an important one.

It’s this filtering perspective that the CMA intends to bring to issues and thereby focus resource where it feels it can make the biggest impact.

What makes for interesting reading in the detail of this assessment is that the outlook and context of the CMA builds on OFT work done in 2012 but focuses more on affordability issues which are more acute than they were in 2012. Issues which are driving unsecured lending and increased consumer spending and which the CMA expect to increase significantly in the future. It also picks up on the current government’s focus on raising standards of conduct in the financial system coming out of the Fair and Effective Market’s review.

What’s also clear is that the CMA is well aware that consumer decision-making is not always fully rational. It can be limited by how much time they have, or are willing to make available, to make decisions and by their ability to compute and process information about the choices they have. Consumers exhibiting these behavioral biases and disadvantages, can be at risk from exploitation by businesses. This can aggravate issues around product information as a result. This is where CMA focus will be.

**CMA Key Findings**

Here are the key findings from the Assessment which drives the current and future CMA focus. They looked at factors which:

- inhibit consumer’s access to markets such as lack of internet access or poverty premiums such as an inability to pay by direct debit or get access to internet service. Whilst it’s not the role of the CMA to deal with social justice, they do have a role in making markets work well for consumers and that includes those who are more vulnerable. This is especially the case where access issues and low-incomes exclude consumers from markets and where they are consequently more prone to exploitation.
• may amount to practices which use information overload or which make it hard to find the right information and make comparisons between rivals to choose the best option or those which leverage consumers’ behavioral biases resulting in decisions which are not in their best interests. This is relevant in markets where switching is an issue either a lack of switching or switching that happens for the wrong reasons.

• rely on the use of technology and tools/intermediaries in decision-making and how impartial and reliable those tools can be and the risk to time-poor consumers or those that focus solely on price at the expense of everything else.

Digital and future trends

The CMA makes the valid observation that online commerce and businesses that act across multiple jurisdictions have made absolutely essential international co-operation in investigation and enforcement between enforcement agencies. This context can lead to gaps in enforcement and regulation but overly hasty regulatory enforcement can also hamper the development of new markets. Regulators have focused on the following new risks, which the CMA think have already materialised, and the presence of regulatory barriers as well as the role of established incumbents who are critical to how such markets develop and unfold. Both cloud computing and the Internet of Things are being looked at by regulators to identify issues that might impact their development in future. The CMA has focused on things such as;

1) Restrictions around online distribution of goods concerning resale price maintenance and online sale bans and minimum advertised pricing.

2) The role of gatekeepers in Internet ecosystems especially where they raise barriers to entry for new entrants or the use of market power in one area to dominate another part of a sector.

3) Is the role of the Internet developing more slowly that is to be expected?

4) The commercialisation and use of personal data and the competitive advantage and the obvious market power possessing such data can give those who have it. The world of big data.

5) The growth of the new consumer sharing economy whether it be in relation to accommodation, car sharing or equipment.

CMA Key Priorities

They are described as;

• more pace with tighter timetables
• more reach via regulated sectors and hybrid markets
• more voice through competition advocacy
• a robustness in process by being fair and thorough
• more efficiency by better project framework
• an independence from evidence based work, and
• more impact from deterrence.

One other significant new focus for the CMA, as set out in their strategic assessment, is technology and emerging sectors, especially those that can disrupt established markets involving supply chains where 3D printing and advanced robotics are concerned. Such technology can experience barriers to market access, especially around intellectual property and interoperability with existing providers and products.
It's these areas that signal what the CMA think is strategically significant now and in the future to help decide what priority the CMA team give to emerging issues that may not have had that much focus before.

**FCA Key Objectives**

There are three key objectives given to the FCA. (The FCA’s approach to advancing its objectives, July 2013. FCA).

These are;

- securing an appropriate degree of protection for consumers,
- protecting and enhancing the integrity of the UK financial system, and
- promoting effective competition in the interests of consumers in the markets This is supported by a wide duty for the FCA to look to achieve their desired outcomes using solutions that promote competition regardless of which of their 3 statutory objectives they are pursuing.

The FCA takes a risk-based approach to ensure it detects potential problems early to meet their consumer protection, market integrity and competition objectives. Specifically, the FCA will:

- identify and assess risks (both emerging and current) to consumers and firms,
- identify the risks that market failures may exist that impede effective competition in relevant markets,
- develop a general understanding of the risks and issues in financial markets to support their authorisations, supervision and enforcement function,
- use their knowledge to make evidence-based policies that change behaviour,
- prioritise, manage and mitigate risk consistently and use risk-based approaches to make decisions, establish common standards and principles to measure and assess risk across the FCA, and
- put in place the infrastructure, systems and tools to catalogue, analyse and assess risk.

In effect the FCA says that it will use the powers given to it to make financial markets work well, so that the UK’s financial services industry can be used with confidence. This includes promoting competition generally within the industry for the benefit of consumers.

There is value in just looking a little more closely at Chapter 3 of the FCA’s approach to advancing its objectives in its July 2013 statement, which discusses its key role. I will then turn to just how well it may have fulfilled these in the first 6 months of operation.

**Promoting Effective Competition**

When deciding what is in the best interests of consumers when exercising its competition powers, the FCA will look at the following key factors;

- the needs of different consumers using such products including helping them make informed choices,
- how easy it is for consumers to access those services, including consumers impacted by social or economic deprivation,
- how easy it is to switch suppliers,
- how easily new businesses can enter a market, and
- how far competition is encouraging new innovation.
Whether they need to intervene or not, the FCA will look at all the market features that could inhibit or distort competition. They are focusing on two principles in their competition work:

1) Competition is a process of rivalry between firms seeking to win customer business over time. Markets that are competitive tend to lead to cost efficiencies, lower prices, greater choice, innovation and economic growth, which then works in the interests of consumers.

2) It is the process of competition that needs to be protected and promoted but specific competitors are not being protected. Rather it’s the outcomes that competition delivers to consumers and the economy as a whole that is the focus.

The FCA focus in on the following key factors to assess competition:

- the market power held by suppliers, whether as new entrants or behaviours by established players acting strategically,
- problems in the flow of information between market participants where consumers or suppliers cannot get information about markets or services,
- low switching rates and understanding the reasons why or if suppliers raise costs;
- what externalities are there where costs or benefits not captured in a product’s price are in play;
- any problems in the way consumers or firms make decisions with the effect that what consumers get isn’t what’s needed, they pay more or consumers don’t constrain suppliers;
- too little consumption or the role of existing regulation.

By using these criteria, the FCA will have looked at competitive constraints on a firm within the right market framework and consider both demand side and supply side substitutability.

So, how have they done?

In any assessment of how the two new UK competition regulators have performed, you have to recognise that both have been in effect putting into practice plans and priorities that were developed and decided on by the organisations that preceded them, the OFT and CC in the case of the CMA and in the case of the FCA, the FSA.

That said, they both set their individual strategy and mission early in their existence and deliberately kept it simple. In the case of the CMA, they only had five areas of focus: deliver effective enforcement, extend competition frontiers, refocus consumer protection, deliver integrated performance and achieve professional excellence. The team wanted to hit their priorities early on and so concentrated in setting out the case for more pace, better reach into regulated sectors, a lot more effort on competition advocacy and explaining what is going on, being robust and so fair and thorough, being evidence-based and so independent and having a greater impact and deterrent effect.

CMA - Progress to date in the 6 months since launch.

In asking how things have gone, the CMA team would want us to draw on the relevant statistics. So we can do that and combine that with key themes the CMA are now addressing. The CMA helpfully set this out in their presentation by Alex Chisholm at the Pinsent Masons Competition Day on the 11th November 2014 in London.
Mergers
• 25 unconditional clearances
• 4 de minimis exceptions
• 3 didn’t qualify
• 1 phase 2 that was abandoned
• 2 phase 2 clearances, and
• on average 28 days was spent on pre-notification.

CMA Key Merger Themes are;
• Improve the timing of case handling
• using their new powers to keep entities separate
• standardise the process more
• improve access to key decision makers
• ensure transparency and guidance, and
• a more targeted approach to intelligence gathering.

Market Investigations
• 2 MI’s were completed (Private healthcare and Private Motor)
• Payday lending had a provisional decision
• energy markets referred
• retail banking referred
• Audit and Aggregates implemented
• residential property management initial report delivered.

CMA Key Market Themes
• Combining together the skills and personnel from the OFT and the CC
• ensure they track the big complex markets
• work closely with sectoral regulators
• integrating and using behavioural economics
• dealing with more litigation
• adjusting internally to tighter timetables.

Enforcement
• 4 new competition cases
• closed 1 CA case after the statement of objections
• closed 2 CA cases after commitments
• charges brought in 1 criminal cartel case
• concluded 1 criminal consumer case with 9 convictions
• closed 2 consumer protection cases and launched 2 new cases.

Key Enforcement Themes
• improve speed and response but not lowering standards
• ensuring better rigour by having for example case decision groups
• placing consumers at the center of CMA work
• a new power of compulsory interviews
• using intelligence to enforce
• maximising their compliance impact overall.
When it comes to focusing on the overall improvement of the CMA’s focus and approach since launch, their new strategy, structure and working methods are clearly key to this. They would claim that they have managed to successfully transition the staff and their caseloads and have obviously been given an increased budget to assist with enforcement and case prosecution. There has been more than 100 new staff recruited, they have set up the competition network and in 2015/16 will have the UK presidency of the international competition law enforcement network.

It’s fair to say that the jury is still out on whether some of the wider goals have been fully achieved yet, but that’s not surprising as it’s clearly early days. The key areas that the CMA want to focus on are;

- Establishing their reputation as competent and independent,
- managing their cases successfully,
- making the best use of their pipeline and resolving priority
- ensure no parts of the economy are left out
- managing their various complex partnerships, especially with sector regulators and
- aim for a financial return to consumer welfare for every GBP 1.00 spent by them.

And what of behavioural economics?
The CMA, like the FCA, have fully adjusted to ensuring that remedies that are to be successful must build in aspects of behavioural economics and address the challenge that consumers are predictably irrational and mistaken. As a result, we are seeing more remedies that are attempting to give consumer access to information but also assess that information and act on that information. So if that information is just too complicated, won’t get read or is too difficult to access, it won’t have the desired effect.

Consumer bias could be addressed by the market or the actions of other consumers. The CMA are however making it clear that they expect firms to try and exploit those biases and corrective action within the market won’t necessarily always address the issue. Dr Mike walker, the Chief Economic Advisor at the CMA, believes that this sort of competition policy is critical to making markets work well and that the CMA must carefully design remedies, building in behavioural economics, to understand and take account of consumer behavior in order to have the intended impact.

CMA- One market report that’s worth some detailed comment: Private motor insurance.

Published in September 2014, the report accepted that the market was generally competitive but was unable to suggest remedies to address higher costs in the so-called “no fault” claims market, principally due to how the law of tort operates and the CMA felt they didn’t have sufficient powers to address this. Although encouraging the market to be more efficient and reduce costs, it also struggled to address credit hire costs and didn't try and cap those costs in the way the insurance industry had requested.

Some remedies that are in the process of being consulted on and may be introduced relate to protected no claims discounts and not agreeing to only offer your best price on price comparison websites.

There has been much comment publicly that the original terms of reference were too narrow and restricted to just private motor when it should have been extended to cover all road vehicles that are involved in road traffic accidents. This extension would include commercial vehicles and private car leasing or small fleets as some vehicles are
used for both private and business use interchangeably. Perhaps the biggest issue and the biggest challenge for the CMA were the difficulties of knowing what best to do with the existing law of negligence and tort in the UK that allows those suffering loss to claim for that loss in full.

When it came to the proposed remedies, a change in the law relating to vehicles involved in accidents and owners and driver’s rights would obviously have been needed. Yet the challenge here is that the CMA have no power to direct that change. This is clearly not very satisfactory as an outcome for anyone and in a further disappointment to the industry and consumer groups, a decision was also taken not to recommend extending a ban on referral fees. These are fees that are paid by repairers to those who pass vehicle repairs onto repairers and despite a lot of consideration at the interim stages by the CMA team. The view generally was that this represented a missed opportunity to try and remove a key driver that encourages claims farming in the UK market.

One interesting aspect here was the use of “observations and encouragements”, which hadn’t been used before, whereby the CMA wanted to encourage insurers to work together in three areas (and potentially reduce at least some competition aspects between them as a result). These were offering temporary vehicles as a part of standard motor insurance cover, to have more bilateral agreements in place between insurers in the claims area and setting up an industry portal to better manage claim issues.

They made a final point that if the problems observed and consumer detriment were to increase over time, there would be a strong case for the CMA to revisit the issues and the industry. My own personal assessment is that this will inevitably happen in the near to middle term.

**FCA – Progress to date in the 6 months since launch**

If anything, it’s the FCA that has had to undergo the biggest journey and transition, given the previous sector regulator, the FSA, didn’t have a competition role at all. Further it didn’t always look at the role of behavioral economics when designing remedies in the market and had a clear over-reliance on data remedies to try and address consumer bias or their inertia around financial products. It was often largely left to consumers to read their various reports and compare prices themselves.

When the FCA’s competition role commenced on the 1<sup>st</sup> May 2014 with a new regulator entirely financed by the industry by virtue of a levy (and not tax funded supervision), it was as though a collective realignment took place in Canary Wharf about how best to regulate banking and insurance. “Promoting competition in the interests of consumers” and addressing the challenge of behavioral bias in consumer decision making is now the focus. In its short existence much effort has been directed to addressing failures in basic design or choice architecture to allow for and accommodate an underlying principle of human psychology and the fact that people guess, use gut feel or their instinct, which can sometimes be leading them towards the worst outcome available. This means the focus is on the full customer journey and putting consumers at the heart of everything. Essentially, the brief here is quite simple: boost engagement with consumers. The answers, however, are anything but simple.

The FCA Staff Paper Number 1 from 2014 made the point that the FCA will be using insight from behavioural economics alongside a traditional analysis of competition issues and market failures to assess problems in financial markets and to do so better than they have done in the past. Their focus is on spotting and addressing risks to consumers and asking if there is consumer bias present and was the buying decision a reasonable one to
make. They will ask what is the underlying cause (individual company action or market wide) and consider if nudges (that is small prompts or defaults which lead to consumers making better decisions for themselves) should be deployed to improve things. The capacity for this approach to be read across other regulators and other industries is obvious.

FCA - Concurrency coming into play.
To encourage greater cooperation between the CMA and other regulators, the government decided to give the FCA concurrent competition powers. The FCA asked for these powers and it will allow it to enforce competition issues under the 1998 Competition Act as well as the 2002 Enterprise Act. This is being implemented in April 2015, 12 months after its core role commenced. This means it becomes a full member of the European Competition Network, allowing it to better engage in the regulatory issues that are being addressed at a European level in the financial services sector.

FCA- some key developments:

1) General insurance Add-Ons Market study, July 2014. This reviewed a select number of add-on products like travel cover and concluded that the way the product was sold and the time it was sold might impact on consumer behavior and their levels of engagement and compared value with stand-alone alternatives. Both transparency and comparability needed to be increased.

2) Thematic review of annuities -Feb 2014. This found that some parts of the market were not working well and launched a market study as well as further developing annuity comparison websites.

3) Thematic review of Price Comparison Websites in General Insurance-July 2014. This looked at motor, home and travel. It concluded that PCW’s didn’t provide sufficient product information to allow meaningful comparisons of product and were not always aligned to customer interests. Further, the FSA guidance from 2011 hadn’t been implemented. As a result PCW will have to implement these actions now.

4) Thematic review of conflicts of interest and intermediary remuneration in commercial Insurance intermediaries in May 2014. This found such conflicts were not properly managed, with sources of revenue causing significant conflicts.

5) Thematic review on PPI mis-sales redress in August 2014. This looked closely at the redress scheme and what worked well and not so well to apply this to future redress schemes.

Key Guidance on formulating your own global competition risk policy.
It makes sense to provide a short clear set of key issues that should be considered when setting up a global competition policy to try to address the sort of risks that this article sets out and that you may face, irrespective of the industry in which you’re operating or where you’re based. These points are followed as part of managing your competition risk, you comprehensively address some of the key potential competition exposures you may face in the market place within which you operate.

They are;

1) It is vital to show that an organization takes competition risk seriously and a statement from senior management in your policy helps demonstrate that point.
2) In any global organization each jurisdiction will have its own laws relating to competition issues. This is true for Europe as a whole as well as other overseas territories in which you may operate. However, you can still set out core acceptable principles that the organization as a whole should follow and apply wherever the company conducts business.

3) Your set of guidelines should set out when management and businesses as well as their lawyers should seek competition advice and what are the key do’s (such as when to get legal advice) and don’ts (like exchange forward looking confidential information with a competitor). You should think about the sort of issues that might occur in your industry and offer pre-prepared advice in answer to those questions. This is particularly helpful for business people that need clear and concise examples of what is and what isn’t acceptable business behaviour in a competition context.

4) It’s a good idea and saves legal team work if you set out clear guidance of what to do and not do at industry meetings. This is perhaps one of the single most popular questions addressed to in-house counsel. Even better is a set of draft terms of reference for industry association meetings.

5) Finally, no set of competition guidelines will be complete without a section on dawn raids and how you manage them. You should include the powers of the regulator to enter and seize documents, what reception and company offices should do, how the team should respond to a visit and manage access to documents and personnel, what to do if questioned or advising someone who is being questioned, how privilege works, how you deal with digital information and how to set up a local office information pack that includes key individuals, their contact details and roles and who is part of the total response and shadowing effort. You can go further, as Aviva did, and set up training materials for business staff and legal teams globally so they know what the key risks are and how best to manage them. You can have a set for the lawyers and a set for the business.

Finally, the Websites
You can’t have an assessment of the performance of the FCA and the CMA so far without mentioning the web sites!

I was supported by one of my competition secondee’s from Aviva, Julia Wright, who looked at both sites in October 2014 and came to some pretty clear conclusions. That said, when you read this after January 2015, it’s fair to say that the team at the CMA really get it: they have been inundated with comments at conferences and industry meetings about some aspects of the GOV.UK website and its failings. It’s also fair to say that the CMA, for reasons to do with security, policy and efficiency, had to run their site on the GOV.UK website and abide by wider government policies for all departments. This has meant the search facility, in particular, left users looking for needles in haystacks to a degree. But they are on to it.

FCA site.
- Was very accessible for both consumers and businesses and was designed for both,
- Had plain language and had a silver award from the Plain Language Commission,
- Sets out what competition is clearly and how the FCA is promoting effective competition,
• Had a very strong search tool where searching by year and document is possible
• Has a good news tab that itself can be searched,
• Sets out Commission members and their bio’s
• Has a Twitter and RSS feed.

However;
• the technical guidance wasn’t as strong as the CMA site.

**CMA site**
• did list management and their bio’s
• did have good thorough guidance on legislation, CMA cases,
• had links to OFT and CC archives,
• also had Twitter and LinkedIn feeds: you can sign up to get notifications.

However:
• the site was not as well directed to the public/consumers as the FCA site,
• did not have one place where latest communications were located but three,
• the layout and presentation suffered somewhat (it’s been updated twice since we looked at it), and
• as hinted at didn’t have a robust search facility but rather one that directed you to the government archive. Finding previous OFT and CC cases proved particularly difficult for in-house teams and their advisers.

That said, the overall CMA site has now since been upgraded (twice). The team have listened to feedback they have been given (including ours) and have implemented a number of improvements quickly. This can only assist in-house counsel in their roles. Further improvements are also planned.

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