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## Transcript

# A New Competition Regime for the UK

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## **Edward Davey:**

Thank you for inviting me to speak today. I am pleased to be here; particularly as the subject of the conference 'The role of Competition Policy in building a new economy' is one that will be occupying my mind over the coming months.

At the Budget earlier this year, we set out our Plan for Growth, which clearly recognised that competition underpins economic growth, by driving efficiency and innovation.

That's why we are taking a number of steps to ensure vigorous competition remains at the heart of our economy, and helps create the right conditions for business to start up, invest, grow and create jobs.

We are undertaking far-reaching long-term reforms to reshape the whole of the competition and consumer landscape. In April, we launched a strategy focused on empowering consumers – looking at how we can 'nudge' people to make better choices. This is critical, because informed, empowered consumers demand choice, which stimulates competition.

On Tuesday, we published a consultation on reforming the consumer landscape. It looks at how we can streamline the current array of consumer bodies and create a single, clear advocate for consumer education and information in Citizens Advice. It also set out our plans to strengthen consumer protection by proposing a beefed up role for Trading Standards, supported by more resource and better co-ordination.

But today, I want to concentrate on the consultation we have run on Competition Reform, which closed on June 13. We have had over 114 responses and I know that many here today took part, helping us debate the issues and hear a wide range of views. Thank you for your input.

I'd like to give you a flavour of what we have heard during the consultation, and the issues we will explore further as we start to make decisions in this important area.

## **Creation of the CMA**

At the heart of our plans is the creation of a strong single Competition Markets Authority, promoting effective competition in the interest of consumers. Whilst there is quite a lot of support for such a move, it's fair to say that we haven't yet managed to convince everyone.

And I do understand why this is. In the current environment I can see that such a change is seen as risky. Both the Office of Fair Trading and the

Competition Commission are world-class, and of course a merger of any sort brings with it a degree of uncertainty and disruption which, if not handled well, could undermine our very objective.

But here I really do think we need to be ambitious and look to the future. And whilst I understand the view that some of our proposals could, at least in theory, be achieved without a merger, I think this stance underestimates the benefits and synergies a merger will bring - which could not otherwise be achieved.

I believe there are three particularly strong arguments for creating the CMA.

First, it will build more predictability and a more streamlined approach into decision making, through strong oversight of the end-to-end case management process.

Second, a CMA will be a single powerful advocate to speak for competition across the economy, in Europe, and globally. That is much more difficult in present conditions, where we often have two different competition authorities' representatives, each representing their own views and reflecting the role of their particular part of the competition regime, rather than the whole picture.

Third – let's be frank - public money is short. A single authority will be able to focus resources on addressing the most important competition problems of the day. It will also allow more efficient use of resources across the whole of the system. It makes absolutely no sense to have overstretch in some part of the competition regime, and under utilisation of resources in another.

And for business time is money. The time they have to spend understanding the concerns of two quite different authorities, with different cultures and objectives, is time that generates additional costs for the business.

I know there are concerns about the ability of a single authority to preserve independent decision-making and, where relevant, the separation of decisions into two phases within a single body. I am considering this very carefully – but I strongly believe it is possible.

### **CMA Framework**

Clarifying the CMA's purpose and vision will be very important here. As will preserving the independence of the authority's decision-making from Government, while ensuring accountability for the public money it spends.

So I am attracted to setting out in legislation the primary duty of the CMA to promote competition in the interests of consumers. This will mean the

purpose and duties of the CMA will be set out for all to see and judge its performance against.

This reflects the approach used for most sector regulators. Indeed, the Chancellor announced last week that the Financial Conduct Authority will have a new primary duty to promote competition.

I am also considering whether it would be useful for the Government to set out our view of how the CMA will, within the competition framework, support long-term economic growth. This could be a long term, high level and non-statutory statement designed to make transparent the relationship between the Government and the Authority. It would help reinforce the independence of the CMA's day to day decision making role in individual cases, while strengthening the democratic accountability of the regime.

## **Mergers**

Turning to the issue of mergers - while there is consensus the UK's regime works well in most respects, the consultation looked at a spectrum of options for addressing some problems identified with the current voluntary notification regime.

Not surprisingly, business has been very concerned that any move to a mandatory notification regime could create additional costs and regulatory burden.

I understand these concerns and I will keep them in mind as I consider the next steps. However, I do believe it's important that we address the issue that the competition authorities investigate a high proportion of completed mergers.

This reduces the effectiveness of the competition regime as when these mergers are found to be anti-competitive they can sometimes be difficult to undo and it can also be difficult to apply the right remedies.

So as I weigh up the options an important issue for me will be whether strengthening the voluntary notification system through stronger hold separate powers will adequately address the problem of completed mergers.

## **Markets**

The markets regime is unusual in global terms, and generally well regarded feature of the UK's competition framework. Between 2007 and 2010

OFT and Competition Commission's combined market work have saved consumers an estimated £345 million a year. This is a huge achievement.

However, like most things it could still be improved further. Responses to the consultation have shown that that the biggest weakness of the current regime is the length of time taken to conduct market investigations. To date, market investigations have taken up to 67 months to complete. Delays like this cause uncertainty for business and are detrimental to consumers.

A single authority will have an incentive to resolve any problems at the most appropriate stage in the process. But this alone will not be enough. We need to give businesses more certainty about how long cases may take, so I am considering introducing shorter, statutory timescales, across more of the process, with enough flexibility to allow the CMA to conduct investigations well and agree remedies at the right stage.

## Concurrency

The Consultation also looked at how we can strengthen general competition law in the regulated sectors by ensuring vigorous enforcement by the sector regulators and the new CMA, thereby avoiding an excessive reliance on detailed sectoral regulation.

It's important to recognise that sector regulators have a range of objectives, which go beyond just promoting competition. And in many cases, they may be required to use their regulatory tools, or these may be faster and cheaper to use.

But there is clearly scope for improvement. I am examining the idea of applying the kind of duty Ofcom has - to consider its competition act powers before using its Broadcasting powers - more broadly to other sector regulators.

We would need to ensure, of course, that this did not conflict with the regulators' wider duties or their freedom to apply the most appropriate tools to deliver their objectives – which is, after all, one of the key Principles for Economic Regulation.

I am also carefully considering whether to give the CMA an oversight role, similar to that of the EU Commission in the European Competition Network - including the power to take cases from sector regulators in appropriate circumstances. In doing so, I am focusing on what the right balance should be between the CMA and other authorities with competition powers.

## Anti-trust

On Merger and Markets, the UK regime is generally considered to compare very well with regimes in other countries so only marginal changes may be needed. But on anti-trust many respondents to the consultation felt more could be done to improve the quality of the decisions taken and to reduce the length of time taken to resolve cases.

Firmer signals need to be sent to markets that cartel behaviour and abuses of dominant positions will be discovered and will be punished.

Not surprisingly, that's where the consensus ended, and forceful arguments were made in favour of a number of different solutions.

The OFT, the sector regulators and some law firms said that incremental improvement in the current arrangements was the best way forward.

Others, including the City of London Law Society, some academics, and the Competition Commission, saw the need for an enhanced decision-making processes, such as the adoption of the CC's own panel structure.

A third group, including the CBI, and the Joint Working Party of the Bars and Law Societies of the UK, considered that a move to the CMA prosecuting cases before the Competition Appeal Tribunal would be the best solution.

Clearly, this is an area where we need to undertake a thorough analysis of all views and evidence. We also need to balance the potential for long-term benefits against any short-term disruption in a change of regime. I have not yet formed my own view and am considering the best way forward.

## Decision making

Finally, I want to talk a bit about decision making within the new CMA. Clearly this is will be crucial to the success of the new regime.

It is very clear that respondents want to retain the strengths of the current regime. In particular, they want separate phase one and phase two decision-making to continue for markets and mergers. It won't come as a surprise to learn that respondents want fair and robust decisions to be prioritised over speed – although there should be real efforts to make them as quickly as possible.

The consultation paper set out a base case for decision making, which included independent panels for phase two decisions. The great majority of stakeholders prefer this option. The panels will bring a second pair of eyes to

cases and provide confidence that decisions are independent of government, the phase one process and the institutional interests of the competition authority. Continuing with the Panel system will allow us to preserve independent decision-making, while realising the other benefits of a move to a single authority.

## **Conclusion**

As you can tell, we are currently working through a wide range of issues as a result of the consultation. My Department is still doing a great deal of work analysing responses and considering the evidence. We hope to be able to publish the Government response in the autumn and to introduce a Bill in the next session of Parliament.

But this is very much work in progress, so now I am happy to take questions and hear your views on these issues.