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Competition and Economics Division  
Financial Conduct Authority  
25 the North Colonnade,  
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Dear Sir / Madam,

## **FCA Mission: Approach to Competition**

The Financial Services Consumer Panel welcomes the opportunity to respond to the FCA's *Approach to Competition*.

### **Introduction**

The *Approach to Competition* emphasises that the FCA's competition activities should be carried out in the interests of consumers. We would therefore encourage the FCA to combine the *Approach to Consumers* and *Approach to Competition* in a final version, building on the high level decision-making framework set out in Chapter 2 of this consultation. The FCA should start with the harm or potential harm, what is causing it, and determine which of its tools is best suited to addressing the problem in a timely way. A combined *Approach* would enable the FCA to set out how it puts consumers at the heart of its analysis; how it consistently applies the principle of 'proportionality'; and how it identifies and assesses the trade-offs that inevitably need to be made between its consumer protection and competition objectives.

We fully support the FCA's recognition of the limits of relying on consumer engagement. As the Panel argued in its 'Consumers and Competition' position paper<sup>1</sup>, remedies that are designed to improve decision-making and switching have proved ineffective in markets such as energy, and they are likely to be even less effective in financial services markets. In most retail financial services markets, financial services consumers can't assess whether they would get better value elsewhere. Moreover, many consumers do not want to keep switching, they just want to be treated fairly by their existing provider.

The *Approach to Competition* recognises that striking the right balance across the FCA's objectives is difficult. Innovation should encourage new business models that challenge the *status quo* rather than simply facilitating more entrants into the market. The FCA should set out how it satisfies itself that innovation benefits consumers without loss of consumer protection.

More generally, the FCA should set out how it will take account of technological advances in its approach to competition. Simply 'monitoring developments' (page 15) is not consistent with the preventative approach set out in the Mission. For instance, Open Banking and PSD2 will lead to innovative products and services for consumers, but are also likely to give rise to new forms of harm (eg APP scams) or exacerbate existing problems (e.g. financial exclusion). Remedies should factor in mitigating strategies to address the new risks.

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<sup>1</sup> FSCP 'Consumers and Competition' position paper: [https://www.fs-cp.org.uk/sites/default/files/fscp\\_consumers\\_and\\_competition\\_position\\_paper.pdf](https://www.fs-cp.org.uk/sites/default/files/fscp_consumers_and_competition_position_paper.pdf)

**Q1. 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?**

Yes, but the FCA should be clearer on what 'good' looks like and how the theory of competition translates into good consumer outcomes. Evidence collected for the Panel found that, although there are many firms that appear to compete vigorously, they strive to inhibit consumers' ability to shop around, by developing products, prices and information that are complicated and sometimes misleading.<sup>2</sup> Looking at issues in isolation, eg insurance add-ons or cash savings, misses bigger problems in the way business models work against the consumer interest. We would encourage the FCA to take a more holistic view of harm, as it has done in the asset management market study.

Page 6 says 'when competition works well, it drives down costs and prices, drives up service standards and quality and increases access to financial services' – how will the FCA measure these market impacts?

**Q2. Are there other indicators of potential harm that we should consider in our preliminary assessments of competition?**

The list on page 12 mostly describes 'textbook' indicators of weak competition.

Some of the issues described under 'barriers to switching' might better be described as 'information problems', which would encompass complexity, and information that is difficult to access or understand. Exit penalties aside, the reason consumers cannot freely move to the best value firm is usually because they haven't got the right information to make the decision.

This is true even where there are tools that appear to help people find the right product at the right price, for example in general insurance. Providers cannot compete on good value products, because they need to get near to the top of the comparison list to make a sale. This usually means offering the lowest price, as people tend not to use other filters.<sup>3</sup> This leads to a hollowing out of policies, higher excesses and higher charges for extras, such as administration fees.<sup>4</sup> It also inhibits new entry as, faced with bewildering choice, people tend to go with a familiar brand. People with non-standard risks are not served at all, and struggle to find information about policies that would meet their needs.

A further indicator of weak competition that may lead to harm is absent or obscure price signals. For example, in the current account market, cross-subsidisation, opaque pricing structures and contingent charges obscure the true cost to consumers.

**Q3. Are there other tools we could consider when designing remedy packages?**

The Panel would like to see a greater focus on consumer outcomes in the design of remedies. It is vital to consider the quality of switching decisions – when consumers switch, is it to better value and better quality products?

The FCA should consider how its remedies impact on different consumer segments. For example, there is evidence that women have lower levels of financial awareness and are less likely to shop around or read terms and conditions.<sup>5</sup> Similarly, there is evidence that people on

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<sup>2</sup> [https://www.fs-cp.org.uk/sites/default/files/fscp\\_consumers\\_and\\_competition\\_thinkpiece\\_finalpp\\_jtl\\_20170306.pdf](https://www.fs-cp.org.uk/sites/default/files/fscp_consumers_and_competition_thinkpiece_finalpp_jtl_20170306.pdf)

<sup>3</sup> <https://assets.publishing.service.gov.uk/media/59c93546e5274a77468120d6/digital-comparison-tools-market-study-final-report.pdf>

<sup>4</sup> <https://assets.publishing.service.gov.uk/media/59c93546e5274a77468120d6/digital-comparison-tools-market-study-final-report.pdf>

<sup>5</sup> [http://www.pfrc.bris.ac.uk/publications/Reports/Fincap\\_baseline\\_results\\_06.pdf](http://www.pfrc.bris.ac.uk/publications/Reports/Fincap_baseline_results_06.pdf); [https://prismic-io.s3.amazonaws.com/fincap-two%2Fd08746d1-e667-4c9e-84ad-8539ce5c62e0\\_mas\\_fincap\\_uk\\_survey\\_2015\\_aw.pdf](https://prismic-io.s3.amazonaws.com/fincap-two%2Fd08746d1-e667-4c9e-84ad-8539ce5c62e0_mas_fincap_uk_survey_2015_aw.pdf)

lower incomes are less likely to switch bank accounts than better-off consumers.<sup>6</sup> Financial services firms have a duty to treat all their customers fairly, which includes taking account of their needs and circumstances so that they can participate in the market in the same way as everyone else.

Price discrimination is a problem in many financial services markets. For example, loyal general insurance customers are charged around 70% more than new customers<sup>7</sup>. Disclosing what a customer paid last year is not helpful without a benchmark. A small annual price hike might appear reasonable, but isn't if a customer has been paying over the odds for many years. The FCA needs to address price discrimination without relying on disclosure remedies. Even if a loyal customer wants to switch, the way the market operates means they will struggle to find a good value product that delivers what they need.

The FCA should also consider the speed of its interventions. Lengthy market studies are often followed by consultations, trials or discussion papers, for example, the credit card market study. While the Panel understands the need for due process, consumers should not be left to face the consequences of poor competition or conduct longer than is necessary. Where there is clear evidence of consumer harm, the FCA should act quickly, using interim conduct interventions or using its other powers, eg product intervention.

The FCA's remedies should put more emphasis on the supply-side. Research for the Panel<sup>8</sup> indicated that levels of shopping around and switching in financial services are unlikely to change significantly without supply-side intervention. There is already an ample choice of products and providers: choice overload is the problem. Competition can only be said to be working if consumers can switch to a product they know is better value for money, and firms respond to this by producing products and services that better meet consumers' needs at a competitive price.

It is essential to assess whether competition remedies improve consumer outcomes, to judge effectiveness, and inform future interventions. Monitoring and evaluation should be built into the design of remedies, maybe using RegTech to enable automated collection of relevant MI.

**Q4. 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?**

The relationship between the FCA and the Competition Markets Authority should be more clearly outlined. The consultation explains that only one authority can formally investigate or take enforcement action on a specific case at any one time and that the FCA and the CMA 'discuss' who is best placed to do so. While it is right that both authorities should cooperate and avoid duplication of work there is a risk that any primacy given to the CMA could hinder the ability of the FCA to act quickly and more robustly in certain markets.

The FCA should also be clearer about its approach to price intervention, and what criteria it uses to determine whether to intervene. In a recent speech, the FCA Chief Economist said that the regulator should "recognise that these [price interventions] are public policy decisions, with winners and losers. Sometimes that means the final call is rightly the preserve of elected politicians, not appointed regulators." Does this mean the FCA will only use price interventions when prompted to do so by politicians?

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<sup>6</sup> [https://assets.publishing.service.gov.uk/media/555cabd0ed915d7ae2000007/PCA\\_Banking\\_Report.pdf](https://assets.publishing.service.gov.uk/media/555cabd0ed915d7ae2000007/PCA_Banking_Report.pdf)

<sup>7</sup> <https://www.fca.org.uk/publication/occasional-papers/op16-22.pdf>

<sup>8</sup> Consumers and competition: delivering more effective consumer power in retail financial services: [https://www.fs-cp.org.uk/sites/default/files/fscp\\_consumers\\_and\\_competition\\_thinkpiece\\_finalpp\\_jtl\\_20170306.pdf](https://www.fs-cp.org.uk/sites/default/files/fscp_consumers_and_competition_thinkpiece_finalpp_jtl_20170306.pdf)

**FCA Restricted: Consumer Panel**

As noted above, some markets (eg general insurance) appear competitive, but exhibit almost all the characteristics of a weakly competitive market because of the way they are intermediated. It would be helpful if the FCA said more about the impact of intermediated markets on competition and consumer outcomes, particularly for people who cannot, or do not want to, use digital comparison tools. This should also set out how the FCA will approach competition issues related to automated switching.

It would be helpful also to have a discussion on barriers to exit. In a competitive market, firms should lose market share if they do not produce good value products and services. They should need to adapt, or leave the market. What does the FCA see as the barriers to exit, and how does this affect its approach?

Finally, a failure to treat customers fairly is a sign of weak competition, and the FCA should set out how it will address this.

Yours faithfully

Sue Lewis

Chair, Financial Services Consumer Panel