

Competition and Economics Division
Financial Conduct Authority
25 The North Colonnade, Canary Wharf
London, E14 5HS

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RE: FCA Approach to Competition Consultation

The Investment Association welcomes the opportunity to provide input to this consultation. We support the regulator's objective to have a more transparent communication with the industry and be more open and accessible to the general public. Our responses to the specific questions, as set out in the attached Annex, have been provided in this spirit.

Overall, we believe that this paper is an important first step towards the industry and consumers better understanding the FCA's competition powers and processes for carrying out competition work. Our response draws largely from our experience with the FCA Asset Management Market Study and makes three key points.

First, although we broadly agree with the proposed indicators of potential harm, we stress the need to ensure that equal consideration is given to all relevant indicators rather than placing too much focus on any single one and that the relevant indicators are identified in the first place.

Second, in designing potential remedies, due consideration needs to be given to what is already addressed by current and forthcoming regulation and where multiple remedy packages are proposed, attention should be paid to the sequencing and 'join-up' of the different changes. Importantly, we believe that alongside any remedy package, concrete information should be provided about how the FCA will determine whether the introduced remedies are having an effect and what steps can be taken if no such effect is found.

Third, further details and additional clarification are needed in a number of areas, including the FCA's concurrent competition powers, the interaction between competitiveness and competition, the relevance of consumer education and the connection between competition and supervision. We believe that this additional information will greatly benefit our and consumers' understanding and help the paper better serve its purpose.

We look forward to further engagement with the FCA on this very important topic.

Yours sincerely,

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ANNEX

CONSULTATION RESPONSE

ABOUT THE INVESTMENT ASSOCIATION

The Investment Association is the trade body that represents UK investment managers, whose 240 members collectively manage over £6.9 trillion on behalf of clients.

Our purpose is to ensure investment managers are in the best possible position to:

- Build people's resilience to financial adversity
- Help people achieve their financial aspirations
- Enable people to maintain a decent standard of living as they grow older
- Contribute to economic growth through the efficient allocation of capital

The money our members manage is in a wide variety of investment vehicles including authorised investment funds, pension funds and stocks & shares ISAs.

The UK is the second largest investment management centre in the world and manages 36% of European assets.

More information can be viewed on our [website](#).

Q.1 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?

Chapter 1 of the paper outlines in detail the FCA's competition work, its primary objectives and what the FCA considers to be an indication of competition working well. The IA welcomes this additional clarity that provides valuable context for relevant FCA activity. The chapter discusses the FCA objectives in more length than the competition powers and we believe it would gain from a more detailed discussion of how the two connect.

Moreover, although the FCA's statutory remit and competition powers are described, this is done in a rather concise manner. Given that competition is the least understood among the three FCA objectives (alongside consumer protection and integrity of the UK financial system) and that the industry has consistently reported lower levels of confidence in the FCA's performance against this objective¹, further clarity and more details in this area would be helpful both for firms and consumers.

In this context, as the paper acknowledges the FCA stands out among other financial regulators for having concurrent competition powers with the CMA. As such, it is particularly important to set out in more detail what CA98 means in practice. For example, the paper would gain from further explanation of how the FCA works alongside the CMA in terms of process, e.g. the decision on whether the FCA or the CMA would carry out a specific investigation, and enforcement action.

Furthermore, it would be helpful to better understand the connection between competition and competitiveness and how they are both framed within the FCA work. The paper stresses that the purpose of the FCA competition work is to promote competition in the

¹ FCA Practitioner Panel Survey, 2017 Report

interests of consumers and not for its own sake but also that it is not within the FCA's remit to promote the UK's or an individual firms' competitiveness in global financial markets. Still, the paper does note that effective competition *"is likely to make UK financial markets and firms an attractive proposition internationally"*. Further insights as to exactly how this would work would be very useful as would consideration of where UK firms' positions could actually be damaged internationally.



This is particularly important in light of the FCA Business Plan which has stated that the Treasury had recommended that the FCA takes competitiveness into account in its assessment of the costs, burdens and benefits of potential rules or policies. Specifically, it noted that *"the Government wishes to ensure that the UK remains an attractive domicile for internationally active financial institutions, and that London retains its position as the leading international financial centre"*.²

Q2: ARE THERE OTHER INDICATORS OF POTENTIAL HARM THAT WE SHOULD CONSIDER IN OUR PRELIMINARY ASSESSMENTS OF COMPETITION?

We consider the outline of indicators that the FCA uses in its competition work, as set out on page 12 of the paper, very helpful. This is particularly the case when read in the context of the statement in Chapter 1 that the FCA competition work *"is not just about lower prices or more switching"* but rather about *"consumer choice"* and *"keeping markets open to entry and innovation"*. We agree with this statement and believe that this is something that should be reflected in all relevant FCA work.

The Asset Management Market Study (AMMS), which is of specific interest to the IA, was wide ranging but we believe that the issue of consumer choice, ease of switching and lack of barriers to entry did not receive as much focus and attention as price trends³. As such, we would not contest the list of indicators provided in itself but would rather support that consideration is given to all indicators that are relevant and that the focus is not centred on any one individually.

This point connects to the question of what indicators would be relevant in each market regulated by the FCA in the first place. For example, barriers to switching is an important indicator but care needs to be taken that this really addresses barriers and is not conflated with frequency of switching whereby high frequency is interpreted as evidence of competition. Specifically for the fund management industry, we see evidence of declining retail investor holding periods which indicates more frequent switching.⁴ This indicates lack of barriers to switching but at the same time could indicate an actual holding period that is much shorter than the recommended holding period. So a balance needs to be struck between healthy levels of turnover and too much switching. However, for other industries where the product is not designed for the medium or long-term, frequency of switching will be much more relevant.

Similarly, price discrimination is significant particularly where there is danger of collusion. We would stress, however, that in a competition context the question is not only about concentration and level of prices but more broadly about whether consumers are getting value for money. This means looking at outcomes in the context of prices. It also means

² FCA, Business Plan 2017/18, page 13.

³ A topic where evidence is emerging of increasing competition and downward price trends in a post-RDR market, as outlined in the IA response to the Interim Report of the Asset Management Market Study.

⁴ The Investment Association, Asset Management in the UK 2016-2017, Chart 79, page 78.

considering consumer choice more widely including issues such as brand value, quality, service and other decisions that go beyond price considerations.



In terms of the use of indicators altogether, the paper would benefit from further discussion of how these are reflected upon in FCA competition work. There would be some concern if this would involve some type of optimisation across these metrics whereby up to a specific threshold the market would be considered to be working well and beyond that not. We believe that the intention is to consider these metrics in terms of what they represent and how they are connected to consumer outcomes rather than looking to specific quantitative limits. If this is indeed the case, this could be reflected in more detail in the paper. And the point of connecting these indicators to consumer outcomes is probably the most important element in a competition study.

Last but not least, these indicators and competition more generally need to be considered in the context of different players in the market. For example, for some services, notably asset allocation for retail customers, it is not just fund managers competing with each other, but with other actors along the distribution chain. Competition work needs to account for structures where it is not just a supply and demand question for one specific group of product and services providers, but where other intermediaries are involved in offering similar services as well.

This raises a broader issue that we also cover in our response to questions three and four, relating to how markets are analysed for competition purposes.

Q3: ARE THERE OTHER TOOLS WE COULD CONSIDER WHEN DESIGNING REMEDY PACKAGES?

The outline of potential courses of actions as listed on pages 18 and 19 is useful and the IA welcomes the clarity in this area. Drawing on recent experience from the AMMS, we believe that there are a number of points that have arisen which could usefully be considered in the context of future remedy packages:

1. Sequencing and market inter-connection. We recognise that a single study cannot cover all aspects of market activity. The AMMS preceded a distribution study of the same markets (Platform Market Study), which in turn excludes consideration of how the retail advisors market operates (subject to RDR-related review). This creates significant sequencing and 'join up' challenges for regulators and industry. As we have pointed out in our submissions to the FCA, more should be done to acknowledge these challenges and clearly set out a framework to accommodate them in both the analysis and potential remedies. This is particularly the case where remedies are now being developed in areas such as fund disclosure, which are highly relevant to distribution, but are ahead of any conclusions from the Platform Market Study.
2. Connection between supervision and competition. The AMMS covered areas relating to supervisory experience on conduct issues as well as competition analysis. The paper would benefit from exploring in more detail how these different aspects are brought together in the context of competition work, including where the competition team may reach different conclusions from published FCA supervisory findings.
3. Connection between potential remedies and existing regulatory policy. In regards to rules changes as a remedy, we agree that this is important and can have a significant impact on how firms compete and consumer outcomes. This is why we would stress that competition work needs to carefully consider both existing and forthcoming regulation in the context of identified competition issues before proposing further changes that are costly to implement but only duplicate what is already in place. Again, the AMMS Interim Report explored far-

reaching remedies on certain areas, notably fee disclosure, where forthcoming regulatory change was about to introduce significant change. We are of the view that the Interim Report would have benefited from wider exploration of the implications of those changes that were already in train.

4. Success measures and future signposting. We believe that remedy packages should carry more information about how the FCA will determine whether the remedies introduced are having an effect, as well as a timetable for such consideration. For example, should remedies be introduced which prove counter-productive or unduly onerous for industry or customers, what is the mechanism for revisiting? Does it require a further competition investigation or the policy team being able to take a view as part of 'normal' FCA market activity? Alternatively, will the FCA give wider consideration to a greater use of 'sunset clauses' in regulation in which rules fall away unless specifically renewed?

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 IA welcomes this paper as part of the wider work that the FCA is carrying out towards fulfilling its commitment to being more open and transparent about how it regulates. We also welcome the opportunity to comment on the questions raised. As outlined in our responses to the previous questions, there are specific areas where we believe the paper would greatly benefit from a deeper and more detailed discussion.

This is significant, specifically if the intention is for this document to serve as basis of consumer communication on how the FCA works, as these are areas with which retail consumers may not be familiar. In this respect, we would very much support the publication of a paper following this one, addressing these comments and providing further clarity where needed.