



UK Competition Reforms – to Support the Creation of the CMA

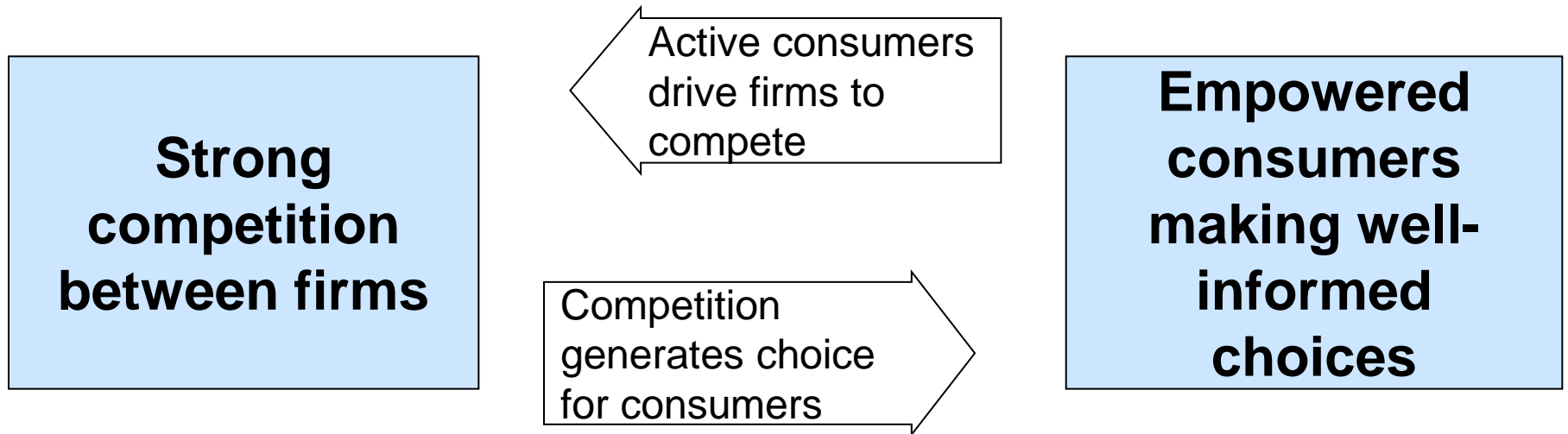
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BIS's Competition and Consumer Policy



More effective markets drive strong economic growth and better outcomes for consumers



Political context for reforms

- UK competition reforms were part of extensive redesign of consumer and competition landscape.
- Business case drawn up shortly after Coalition Government came to power in May 2010.
- Consultation process started in 2011 and Competition & Consumer Landscape Reform Programme began in earnest in January 2012.



The case for change – the CMA

- Greater coherence, more streamlined decision-making and stronger oversight of the end-to-end process.
- More flexibility and incentives to use full range of tools.
- A single advocate for competition (UK and international).
- Scope for efficiencies.



The case for change – tools

- 1. Regime too slow – reduced throughput of cases and impact, plus extra burdens on business.**
- 2. Strong tools to improve markets, but used infrequently.**
- 3. Voluntary merger notification led to a large proportion of mergers referred already having been completed.**



Further reforms considered

- Prosecutorial model for antitrust and removal of appeal on merits.
- Mandatory merger notification.
- Strict limits on CMA's consumer role.
- Alternative decision-making model for mergers and markets.



UK's Enterprise and Regulatory Reform Act 2013

- CMA primary duty to ***'promote effective competition in markets across the economy for the benefit of consumers'***.
- Decision-making provisions give groups of CMA panellists the current role of CC groups on inquiries.
- The Board is responsible for the CMA's other functions and overall strategy.

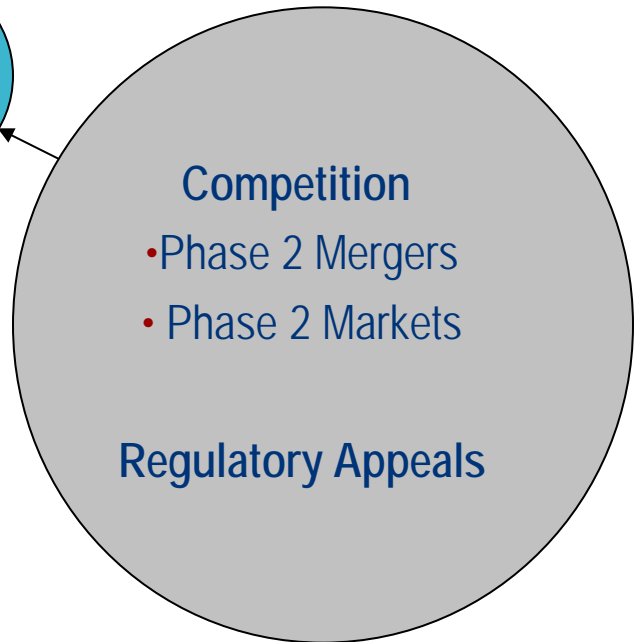
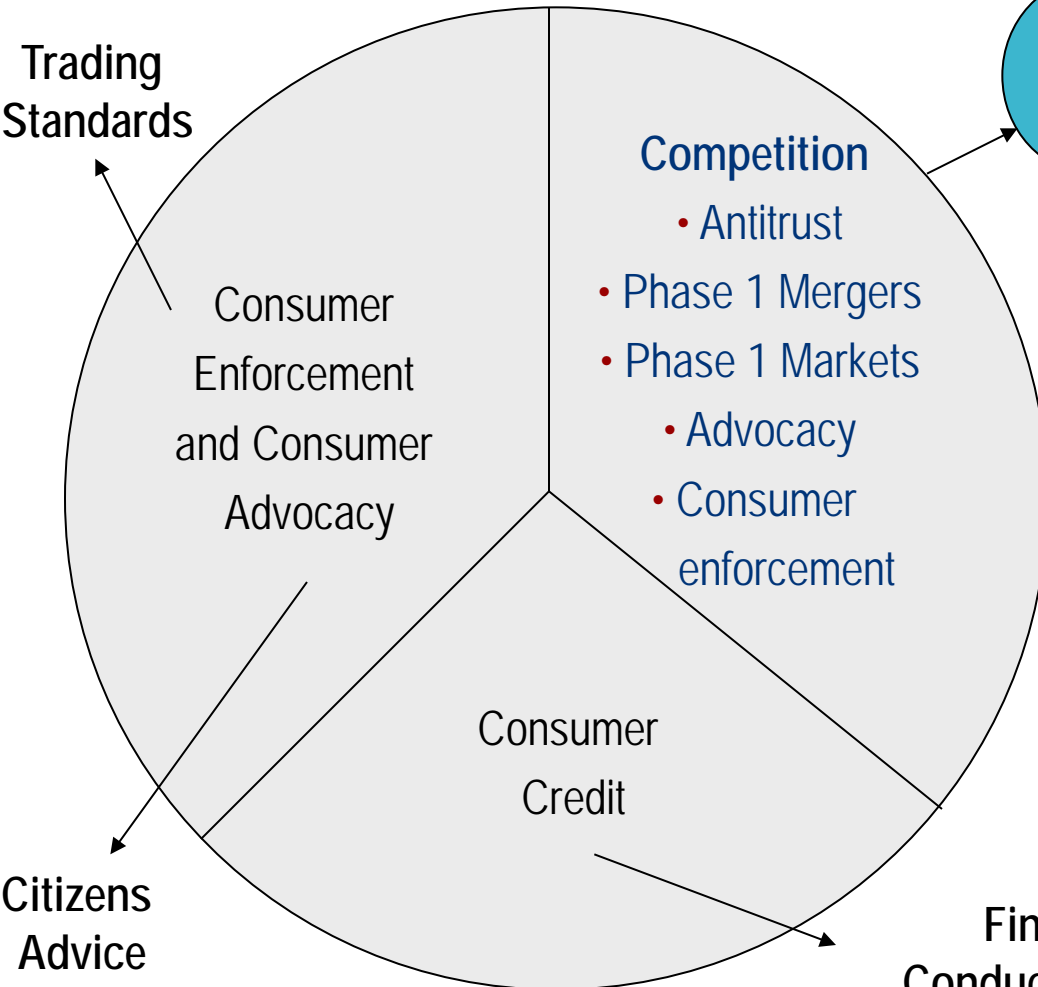
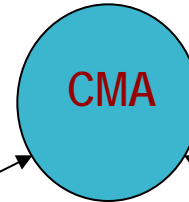
Non-legislative

- Government consulted on the CMA's **'strategic steer'**, which it must have regard to, but not be bound by.
- Performance framework set jointly by BIS and HMT.



Office of Fair Trading

Competition Commission



The Act retains and strengthens the voluntary notification regime:

- **statutory timescales** for all parts of the merger process;
- stronger powers to **suspend integration** of merging companies;
- CMA can **reverse integration** that has already happened;
- **maximum penalty of 5%** of aggregate group worldwide turnover for breach of these interim measures;
- 40 working days **statutory timescale for phase 1** accompanied by information gathering powers for main and third parties;
- a time-limited period ***after*** the phase 1 decision where merging parties could offer and negotiate **undertakings in lieu** of a referral.



The Act improves effectiveness and streamlines the markets regime.

- **Time limits** imposed on all stages of a markets case:
 - 12 months for market studies;
 - 18 months for market investigations (extendable by 6 months); and
 - 6 months to implement remedies (extendable by 4 months).
- CMA Board has **information gathering powers** in wider circumstances.
- CMA has **power to provide independent reports to Government on public interest issues** – i.e. integrated advice on competition and public interest issues including CMA advice on remedies.



Criminal Cartel Offence

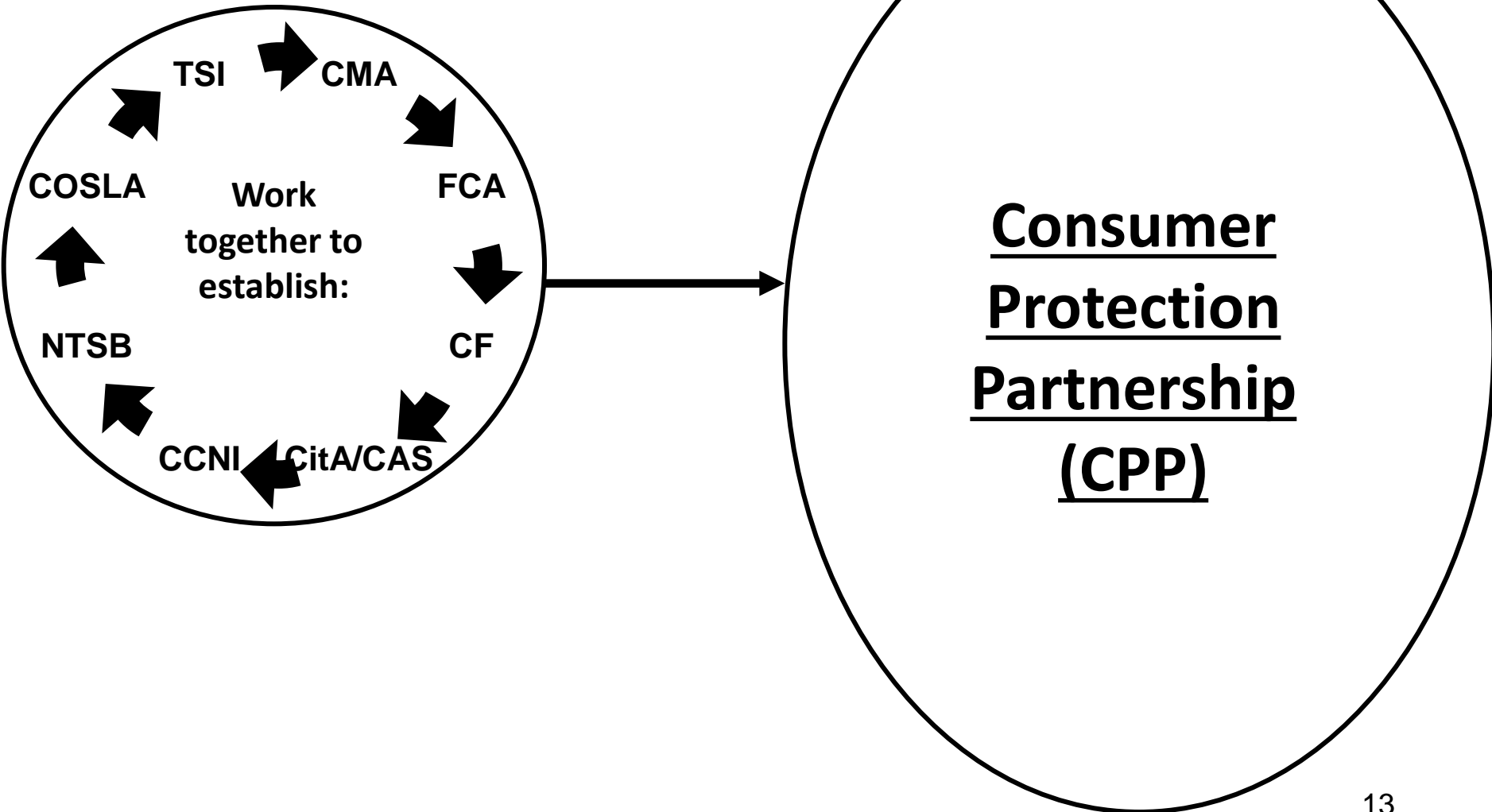
- The Act increases the deterrent effect of the cartel offence by making it easier to prosecute and for the CMA to obtain search warrants.
- Removes dishonesty test
- Allows the CAT (not just High Court) to issue search warrants.

Anti-trust

- Enhanced administrative approach, improving speed of process and robustness of decision-making, with separation between investigation and decision-making.
- Makes clear OFT and CAT approaches on penalties are aligned, in order to mitigate incentives to appeal.
- Changes some investigatory provisions to facilitate better enforcement – a power to ask questions, civil sanctions for non-cooperation etc.
- Performance and report framework to ensure the improvements will be delivered.

The Act and Ministerial Steer aim to encourage sector regulators and the CMA to apply general competition law more proactively in the regulated sectors and improve case management.

- **Primacy** - explicit obligation for regulators to consider bringing an antitrust case before using licence enforcement powers.
- **Information sharing** - the SoS has the power to require arrangements for the sharing of information on potential antitrust cases and how cases are being managed
- **CMA power to take cases** – the SoS is now able to give the CMA the power to take a case from sector regulators
- **CMA required to report** on cooperation between the CMA and regulators, and on their use of concurrent powers
- **SoS reserve power** – the SoS is now able to remove concurrent competition powers of a regulator.





Lessons from change project

- Strong project management crucial
- Investment of time and resources
- Importance of engagement (internally, externally)
- Harnessing external expertise



Any questions?