

## Competition Commission Business Plan 2011/12

### 1. Introduction

- 1.1. The Business Plan 2011/12 sets out the aims and objectives of the Competition Commission (CC) for the new financial year, and addresses the specific challenges it faces in meeting them.
- 1.2. This document specifies the planning assumptions for the year ahead. As of April 2011, the CC continues to work on two market investigations: the local bus services market investigation, and the market investigation into movies on pay TV. These investigations have been conducted using refined processes developed from lessons learnt on previous inquiries. Even though the local bus services investigation involves multiple parties and complex issues, the process has been more robust and resource efficient than on previous market investigations. In the movies on pay TV case the CC has been able to progress a focused investigation quickly and is aiming to complete the report well before the statutory deadline. The CC continues to carry out and conclude a number of merger inquiries referred in the previous financial year; finalize the implementation of remedies on the PPI market investigation; conclude its assessment of remedies in the BAA airports market investigation; and finish the review of undertakings on Kemira Terra and Centrica.<sup>1</sup>
- 1.3. As the CC is a second-phase competition authority, with no control over the flow of its workload, the number or type of inquiries that are referred, or the complexity of the problems to be addressed, it cannot say how many other matters will be referred. However, this document sets out the forecast of referrals for the coming year and how the CC plans to manage its core inquiry work, taking into account the pressures it faces on its budget, as well as central government proposals for changes to the competition regime.
- 1.4. In March 2011, Vince Cable, the Secretary of State for the Department for Business, Innovation and Skills (BIS)<sup>2</sup> issued a consultation to seek views on proposals to strengthen the UK competition regime, including bringing the CC and the competition functions of the Office of Fair Trading (OFT) together to form a single competition and markets authority during 2013. The CC welcomes this consultation and will continue to participate constructively in these discussions to help create an improved competition framework.

### 2. The values and strengths of the CC

#### *The CC's core values*

- 2.1. The CC's core values are its:
  - independence, impartiality and expertise of decision makers;
  - transparency and fairness in decision taking;
  - evidence-based decision-making and analysis; and

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<sup>1</sup> For further information about current casework, see the CC website:  
[www.competition-commission.org.uk/inquiries/current/index.htm](http://www.competition-commission.org.uk/inquiries/current/index.htm).

<sup>2</sup> BIS is the CC's sponsor department.

- effective and proportionate remedies.
- 2.2. The CC is an independent public body, whose decisions are made by groups of experienced industry and competition experts, with a wide range of skills and backgrounds, independent of government and other public bodies and regulators.
  - 2.3. The Group system enables the CC to be flexible and ready to work on the investigations referred to it. Group composition is dovetailed around the needs of the specific inquiries to provide an appropriate skill and experience base. Members have or have had successful careers in key relevant areas including business, academia, law, and/or regulation. Members are supported in their inquiries by highly skilled, professional staff with expertise in areas such as law, economics, accountancy, corporate finance and effective regulatory administration.
  - 2.4. The CC carries out its inquiry functions in a transparent manner, while respecting commercial confidentiality. It publishes on its website, or shares with selected parties, full details of its work, including substantive reasoned reports explaining its provisional findings, proposed remedies and final conclusions; working papers setting out its understanding and analysis of specific issues; and published timetables for inquiries in progress. Its website also provides significant information on its governance and general CC guidance.
  - 2.5. Parties under investigation before the CC have direct access to inquiry teams (both members and professional staff) with meetings conducted face-to-face. This benefits parties by facilitating a two-way interchange.
  - 2.6. The CC aims to follow fair and proportionate processes, and to take decisions based on rigorous evidence-gathering, analysis and assessment.
  - 2.7. To discharge the CC's mandate effectively, its investigations are necessarily proactive and vigorous. To be effective, investigations must be thorough; and to be fair and well reasoned they must be transparent and provide time for response and debate. However, the CC does its utmost to minimize the burden of investigations and to ensure the proportionality of any remedies it imposes. It adheres to clear working deadlines which are made public on the CC's website and progresses casework as quickly as its principles allow.
  - 2.8. CC rulings are authoritative and robust because of rigorous evidence-gathering, analysis, assessment and decision-making. This reflects the credibility of the UK's two-stage process which involves an initial scrutiny by a phase one body (usually the OFT), and, potentially, a more detailed, independent second stage of scrutiny by the CC. This system ensures that cases are given appropriate scrutiny according to their complexity, difficulty, and/or significance.

### ***Value of the CC's work***

- 2.9. Competition is one of the key drivers of productivity. The competition regime, by promoting effective competition, delivers direct benefits to consumers and the economy as a whole by reducing inefficiencies and driving improvements in innovation and productivity. Some of these benefits, for example those flowing from innovation, are difficult to attribute to individual actions taken by an authority. However, the CC aims to quantify, where possible, the benefits flowing from its work. The CC and OFT have calculated<sup>3</sup> an aggregate consumer benefit of £317 million for 2009/10 for the

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<sup>3</sup> For more details see [www.competition-commission.org.uk/our\\_role/analysis/100928\\_uantification\\_report\\_black\\_line.pdf](http://www.competition-commission.org.uk/our_role/analysis/100928_uantification_report_black_line.pdf).

market investigation regime and £310 million for mergers in the same period (these figures include the work done by both the OFT and the CC). In making this estimate of consumer benefits, the CC recognizes that its approach is partial in scope and subject to considerable uncertainties in its application.

- 2.10. In addition, proportionate and predictable regulation of regulated sectors such as water, energy and telecommunications is important for enabling investment and innovation to the benefit of consumers. The exercise by the CC of its functions in these sectors, in particular in relation to price controls, where it has cross-cutting experience and understanding of key issues like cost of capital assessment, provides an important centre of expertise and guidance for the regulators and regulated companies.
- 2.11. The CC has been considering whether it is possible to develop a methodology to quantify the benefits of its regulatory work. To this end, it held discussions with representatives of sectoral regulators and central government departments involved in impact assessments. Overall, it seemed that the CC's role as an appellate body in much of this work made it impractical to attach a specific value to any given intervention. This is because the value of the CC's role is inextricably linked to the successful functioning of the regime as a whole (in terms of confidence in outcomes), as opposed to being determined by the specific adjustment to prices it might make in any particular decision.

### **3. The CC's core work for 2011/12**

#### ***The CC's finances: budgets for 2011/12***

- 3.1. The CC's Chief Executive is also the CC's Accounting Officer and is personally responsible for safeguarding the public funds for which he has charge; for ensuring propriety and regularity in the handling of those public funds; and for the day-to-day operations and management of the CC.
- 3.2. Organizations across the public sector are facing significant reductions to their budgets to enable the Government to reduce the UK's budget deficit. The CC has achieved significant cuts to its budget over the last three years and has worked hard to achieve these savings without compromising on the quality of its work. In recognition of the cost cutting it has achieved and its ability to operate within a relatively small budget compared with other public bodies, the CC has only been requested to find a reduction of 2.7 per cent to its budget this year. The CC has been allocated a budget of £17.8 million for 2011/12, reduced from £18.3 million in 2010/11. The CC also has around £300,000 of capital funding available for 2011/12, a reduction of 47 per cent against the 2010/11 budget of £565,000.
- 3.3. Following BIS's Comprehensive Spending Review the CC's budget has been divided into programme and administration costs. The programme budget consists of inquiry and professional staff costs along with associated inquiry costs, such as external consultants, surveys, members, transcripts, catering and travel. Accommodation costs and income from sublet accommodation have also been included in programme costs. The administration budget consists of Corporate Services and the Secretariat along with depreciation charges for IT equipment, fixtures and fittings, dilapidations and the CC's leasehold asset. The CC's budget allocation of £17.8 million for 2011/12 is made up of £13.3 million for programme and £4.5 million for administration costs. Spending cannot be moved between the two budgets.
- 3.4. The CC's Head of Finance monitors the CC's spending against this budget and reports both internally and to BIS on a regular basis. All budget holders and Inquiry

Directors are given the necessary support, by the Head of Finance, to manage their budgets effectively and ensure that the CC is on target to meet the budget, as well as to seek further savings, particularly through more efficient working practices, wherever possible. Additionally the CC reports to BIS against its objectives, information assurance and key risks, to demonstrate that it is providing value for money for government and the taxpayer.

### ***Managing core work and planning assumptions 2011/12***

- 3.5. The term of appointment of Peter Freeman, CBE, QC, as Chairman of the CC, will come to an end in May 2011. BIS is in the process of recruiting a new Chairman; the outcome of the recruitment exercise is expected to be announced before the end of April 2011. The Chairman is supported by Dr Peter Davis, Laura Carstensen and Roger Witcomb (Deputy Chairmen); Grey Denham, Dame Patricia Hodgson, DBE, and Lesley Watkins (non-executive Council members); and David Saunders, Chief Executive. This group constitutes the CC's Council.
- 3.6. The CC's members (including the Chairman and three Deputy Chairmen) are appointed by the Secretary of State for BIS for fixed terms. A group of members, appointed by the Chairman, is responsible for an individual inquiry. The members are supported by administrative and professional staff and each of the professional teams in the CC is led by a Head of Profession.
- 3.7. The Senior Inquiry Director and the individual Inquiry Directors ensure that inquiry teams are appropriately staffed and have the right processes and procedures in place to carry out inquiries efficiently and effectively. Progress on inquiries is monitored on a regular basis. Peer reviews conducted by staff, the Chairman and, where appropriate, external experts, help to ensure robust and consistent decision-making across inquiries, and are normally carried out ahead of publication of provisional findings and final reports. There is a formal process of evaluation at the end of each inquiry.
- 3.8. The Heads of Profession also have the support of the committee structure to provide consultation and review before they implement changes to the CC policies and procedures. The four internal reviewing committees are the Analysis Group, the Practices and Procedures Group, the Remedies Standing Group and the Finance and Regulation Group.
- 3.9. In order to ensure that the CC has the resources it needs to carry out its inquiries the following assumptions have been made about the likely workload in 2011/12. These assumptions have been based on experience over the past few years as well as knowledge of specific references. These have been used to estimate the likely time and resources required to undertake the assumed workload, again based on past experience, and taking into account work to streamline and speed up inquiry processes.
- 3.10. The CC has assumed the following average workload at any point during 2011/12:
  - 3 merger references;
  - 1.5 market investigations;
  - 1.5 regulatory inquiries;
  - 1 appeal; as well as

- ongoing remedies work and reviews of undertakings.<sup>4</sup>
- 3.11. The individual units of workload represent very different pieces of work, with, for example, the resources required for a market investigation being significantly greater than for a merger reference. Cases also vary considerably in their complexity. Due to the unpredictable referral of new inquiries, it is unlikely that this will represent precisely the work that is, in practice, referred, but it represents the CC's best estimate on which to base resource planning.
- 3.12. If the CC were to have substantial additional inquiries referred which have not been taken into account in the above estimate, it would need to go back to BIS to request additional funding. If, for example, it had to deal with an additional market investigation and there were on average two more live merger cases at any time, this would require £500,000 or more (depending on the complexity of the inquiries) of additional staff and consultancy resource.

### ***Risks and mitigation***

- 3.13. The key strategic risks the CC faces in carrying out its core work in 2010/11 are:
- **Enforced budget cuts and associated restrictions on recruitment make it difficult for the CC to meet its obligations in relation to inquiry work and service level agreements for the provision of shared services.** The CC faces a budget cut for the new financial year of 2.7 per cent (which relates to back office and support services). Although this is a relatively small reduction compared with previous years, it will put pressure on the organization. Government restrictions on recruitment also make it difficult for the CC to be as flexible to changes in its workload. However, the CC is confident it can achieve these additional savings with careful management, and will monitor resources closely.
  - **Proposed changes to the competition regime do not preserve the strengths of the current arrangements.** The CC is regularly in contact with its key stakeholders, BIS and HM Treasury, and has been actively involved in the creation of the consultation document regarding changes to the competition regime. The CC will continue to meet and discuss possible changes to the regime with interested parties with the aim of promoting a strong and effective competition regime which builds on the strengths of the existing regime and places a value on independent, high-quality and timely decision-making.
  - **The CC's processes are not perceived to be effective or run efficiently with the result that the CC is regarded as slow and expensive.** The CC is piloting a more efficient and streamlined process on its two current market investigations. It has also looked closely at its handover with the OFT on both mergers and market investigations and, more generally, is constantly striving to improve its practices and procedures.
  - **The possibility of structural change adversely affects the CC's performance.** In order to mitigate this risk the CC will maintain clear lines of communication between management and staff about predictions in its workload and the outcome of the consultation process. At this stage it is too early to predict what changes will be implemented in the new financial year, but this risk will be closely monitored as possible changes come to light.

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<sup>4</sup> More detailed explanation is provided in the Annex, [Section 5](#), about the different types of referrals the CC receives.

- 3.14. In order to minimize these risks the CC has a clearly defined management structure. Each area of responsibility is managed by a member of the Senior Management Team (SMT), who meet regularly as a group and also report up to Council on a bi-monthly basis. More detailed information about the SMT's objectives and management of risks for 2011/12 can be found in Section 4.

#### **4. The CC's aims and objectives 2011/12**

##### ***Aligning CC objectives with its sponsor department***

- 4.1. In setting its objectives for the new financial year, the CC has regard to the strategic aims and current objectives of BIS and other interested departments, including HM Treasury.<sup>5</sup>
- 4.2. The work of the CC contributes to the delivery of BIS's vision stated in its Business Plan 2011–2015, namely to create efficient and dynamic markets which will contribute to economic growth. The CC supports the need for free and fair markets and aims to facilitate competition for the benefit of businesses and consumers. In turn, this should improve the conditions for business to succeed within the UK, and lead to an increase in the productivity of the UK economy.

##### ***The external environment***

- 4.3. The UK economy is emerging slowly from a global recession, supported by both growing domestic demand and rising exports. According to recent Organisation for Economic Co-operation and Development (OECD) reports, growth is projected to remain subdued in 2011, unemployment is set to fall gradually, and inflation will remain above the 2 per cent target through 2011 due to the initial boost from the rise in VAT, but is projected to fall below the target in 2013.
- 4.4. 2011/12 continues to be a challenging year for the whole of the public sector with continued pressure on public expenditure from central government, and significant budget cuts.
- 4.5. The Coalition Government's view is that competition is important and is central to a growing economy. It has publicly stated that the UK competition regime is good, but could be better and has begun its review of the competition framework.

##### ***Expected change in 2011/12***

- 4.6. The Business Secretary, Vince Cable, issued a consultation in March 2011 to seek views on proposals to deliver more streamlined and consistent merger, market and Competition Act processes, including bringing the CC and the competition functions of the OFT together to form a single competition and markets authority (SCMA).
- 4.7. The new body would be responsible for merger regulation, market investigations, cartel and antitrust cases, as well as a number of functions with respect to the regulated utilities. The proposal is designed to build on the existing strengths of the CC and the OFT while also improving speed, efficiency and the through-put of cases. The consultation period will end in June 2011, after which Ministers will announce their decisions.

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<sup>5</sup> See the Annex, [Section 6](#), for further information about BIS and HM Treasury's objectives for 2011/12.

- 4.8. The CC has been actively engaged with BIS, HM Treasury and the OFT in the preparation of the consultation document and will continue to work closely with its partners on the design of the new regime going forward.

### ***Key areas for reform***

- 4.9. The Government proposes to reform the competition regime to:
- **improve the robustness of decisions and strengthen the regime**, including by:
    - considering ways to improve the voluntary merger notification scheme and the alternative of the mandatory pre-notification of mergers;
    - considering ways to strengthen the operation of concurrent competition powers, including joint working between the SCMA and sector regulators on competition cases;
    - reforming the dishonesty requirement of the criminal cartel offence, to make it easier to secure convictions in serious cases; and
    - achieving the right governance and decision-making structures for the SCMA;
  - **support the competition authorities in taking forward the high-impact cases**, including by:
    - enabling the SCMA to carry out investigations into similar practices across different markets;
    - considering whether statutory objectives should underpin the competition focus of the SCMA or whether the SCMA should have a statutory duty to keep key sectors under review; and
    - strengthening the voice of small business by extending the super-complaint powers to SME bodies; and
  - **improve speed and predictability for business**, including by:
    - introducing more (and tighter) statutory deadlines in merger and market cases, coupled with appropriate information powers;
    - introducing an exemption for small businesses from merger control; and
    - streamlining the handling of antitrust cases.

### ***Changes to the CC's statutory responsibilities***

- 4.10. The Government has also announced its intention to change the responsibilities of the CC in a number of areas. It has published or proposed legislative change to:
- reform the regime for appeals to the CC from regulatory decisions by Ofgem. Legislation to implement the EU Third Energy Package, including those setting price controls is expected to be made and brought into force early in 2011/12;
  - reform the regime for appeals on postal licensing matters, giving the CC continuing responsibility for price control appeals; and

- reform the regime for determining price controls at congested UK airports, although the date for the necessary legislation is not yet clear.
- 4.11. In addition the Government is proposing to give the CC new functions in relation to health care under its Health and Social Care Bill. Under this Bill the CC will have an appellate role in relation to the establishment of regulated prices for the supply of products and services to the NHS; and also a seven-year review role. The Bill also enables mergers in the health sector between NHS Foundation trusts to be referred to the CC. These new powers are not expected to be commenced before April 2012 at the earliest.
- 4.12. The CC is in discussion with each of the relevant government departments about these new powers.

### ***The CC's objectives***

- 4.13. The delivery of the core work by inquiry groups and the alignment of the CC's activities for the coming year with BIS's vision for change is supported and developed by the management of SMT. Each SMT leader has a key role in ensuring that appropriate guidance, policies, procedures and processes are in place to support the inquiry groups in their decision-making and ensuring that the CC is effectively managed.
- 4.14. For 2011/12 the CC has six key objectives, which are intended to improve the overall quality and coordination of its work. Each objective is led by an SMT leader, who will ensure that they are achieved in consultation with SMT, and with internal CC committees where appropriate. These are to:
- make the right decisions in market investigations, merger inquiries and regulatory appeals;
  - take the right remedial action and implement effective and proportionate remedies;
  - conduct fair and transparent processes;
  - ensure no undue burden on business or taxpayers;
  - ensure positive engagement with CC stakeholders and external representation of the CC; and influence the development of international competition policy and implementation and learn from international best practice; and
  - support the organization by ensuring that efficient and effective services and support mechanisms are in place.

### ***The risks to achieving these objectives***

- 4.15. The six objectives for this year are subject to the core CC risks set out earlier in [Section 3](#).
- 4.16. As in previous years, the main specific risk to the achievement of these objectives is that inquiries and litigation, which comprise the day-to-day activity of the CC and operate to tight and inflexible deadlines, divert resources away from non-inquiry activity.

- 4.17. In 2011/12, there is an additional risk that the main priority for non-inquiry work is the possible institutional reform, and work on improving CC processes is considered to be of lower priority.

***Objective 1: Make the right decisions in market investigations, merger inquiries and regulatory appeals—led by Alison Oldale, Chief Economist***

- 4.18. The aim of Objective 1 is to ensure that the CC achieves its objective of making the right decision on mergers, markets, and regulatory appeals. Achieving this rests on ensuring that the evidence and analysis on which the decision on competitive harm or regulatory detriment is based is appropriate, and that the decision is supported by the evidence, is clear, and reflects the reasoning of the members.
- 4.19. To support these outcomes there are three key areas of focus.
- (a) *People*: make sure staff have appropriate skills, training, and motivation, including a high level of engagement throughout the CC in debating and formulating the analytical approach for mergers, markets, and regulatory appeals.
  - (b) *Analytical frameworks*: have guidelines and practice notes on analysis of mergers, markets, and regulatory appeals that are up to date, clear, and cover important areas.
  - (c) *Inquiry procedures*: these should support effective evidence-gathering and deliberation by members, allow for adequate analysis and consultation, and ensure that decisions are clear, error free, and reflect the reasoning of the members.
- 4.20. It is particularly important that lessons are learned from ongoing inquiries, including from feedback gathered both internally and externally (through the Stakeholder Perception Survey). The review meeting held at the end of each inquiry is an important mechanism for collecting lessons learned which can then be taken forward by the appropriate committee or staff team.
- 4.21. In 2009/10 and 2010/11 the CC introduced important changes to merger guidelines, revised risk management and end-of-inquiry review procedures which now place more emphasis on highlighting issues relating to making the right decision, and revised quality assurance procedures and changes to the working papers so that these now place more emphasis on keeping in view the direction of travel of an inquiry. It also established the Finance and Regulatory Group to oversee the development of its analytical frameworks in regulatory appeals, and reinstated regular debate on topics in analysis at the Analysis Seminar. Much of the activity in 2011/12 will involve making sure these changes are consistently implemented to improve the ease and reliability of making the right decision.
- 4.22. In particular, this year, Objective 1 intends to:

<b>Guidance and practice notes</b>	Publish draft revised Market Investigation Guidelines.
	Publish working papers and notes on surveys and the assessment of retail mergers.
	Develop internal practice notes on particular topics for inclusion in the Regulatory Toolkit.
	Use joint CC/OFT best practice group to increase alignment with the OFT on the substantive assessment of mergers.
<b>Ex post evaluations</b>	Review results of the ex post evaluation research on past retail mergers and ensure that appropriate lessons are learned. Commission further evaluations.
<b>People</b>	Introduce more regular training on analysis aimed at non-technical staff and members.

### *Budgets and resources*

- 4.23. Most of the activity involved in making the right decision is undertaken by individual inquiry groups, with risk management overseen by SMT.
- 4.24. The Heads of Profession, together with HR, have responsibility for making sure the CC has staff with the right skills, training, and motivation, overseen by SMT.
- 4.25. The Analysis Group has oversight of the development of the CC's analytical frameworks for mergers and markets. The main functions of the Analysis Group are to appraise internal evaluations of recent inquiries; oversee the conduct or commissioning of evaluations and other analysis, and make proposals on what the CC's approach should be, updating relevant published guidance where necessary; contribute to the dissemination within the CC of best practice and lessons learned; consider the costs and benefits of the CC's activities; and considered 'ex post reviews'. Approximately 25 days per month of staff time is allocated to the Analysis Group activities.
- 4.26. The Finance and Regulatory Group has oversight of the development of the CC's analytical frameworks for regulatory appeals. Its objective is to make sure the CC's expertise in regulation is effectively brought to bear upon regulatory appeals and is fostered and developed through debate and research. Approximately 11 days per month of staff time is allocated to Finance and Regulatory Group activities.
- 4.27. The Practices and Procedures Group has oversight of inquiry procedures. The resources for this are discussed under Objectives 3 and 4.

### ***Objective 2: Take the right remedial action and implement effective and proportionate remedies—led by David Roberts, Chief Financial and Business Adviser and Head of Remedies***

- 4.28. The aim of this objective is to ensure that the CC makes effective and proportionate decisions on remedies and that remedies are implemented appropriately so as to address the competitive harm identified by the CC's analysis.
- 4.29. The CC seeks to achieve this objective mainly through:

- (a) *Guidance*. Developing and updating guidance and policy on remedies analysis and procedures to take account of remedies research, policy issues and experience on CC inquiries etc.
- (b) *Training*. Ensuring that staff and members are kept up to date with CC guidance and policy on remedies and issues and outcomes on remedies.
- (c) *People*. Recruiting and developing staff with appropriate skills and experience in remedies issues and ensuring that an appropriate mix of these staff and supervisory resources are allocated to individual inquiries and relevant non-inquiry work.

4.30. Much of the activity needed to embed analysis and procedures to ensure the right remedial action occurs as part of normal inquiry processes, such as allocation and supervision of appropriate staff and planning of analytical work streams. These inquiry processes now incorporate the recommendations of the market remedies review and, in particular, seek to ensure that remedies analysis starts at a timely stage of the inquiry and that this analysis is appropriately linked to the analysis of theories of harm.

4.31. In particular, this year, Objective 2 intends to:

<b>Guidance</b>	Consult on and finalize new market remedies guidance as part of new Market Investigation Guidelines.
	Share and discuss the CC remedies approach with external stakeholders as part of the development of new guidance. The CC will present its approach on remedies to external audiences including other competition authorities to foster discussion and exchange of ideas on best practice.
<b>Feedback from completed inquiries</b>	Continue to evaluate learning points on remedies on completion of all relevant inquiries.
	Continue its programme of reviewing the outcomes of remedies in past cases to establish learning points from these cases and assessing whether remedies performed as intended. In 2011/12 it is intended that the CC will complete the evaluation of three further merger cases.
<b>People</b>	Conduct a further round of remedies training to ensure that members and staff are fully conversant with new remedies guidance and current remedies issues.

### *Budgets and resources*

- 4.32. Most of the activity involved in putting in place the right remedies is undertaken by individual inquiry groups, with risk management overseen by SMT.
- 4.33. The Heads of Profession, together with HR, have responsibility for making sure the CC has staff with the right skills, training and motivation.
- 4.34. The CC's Remedies Standing Group, consisting of the Chairman, Deputy Chairs, three other CC members and relevant staff in attendance, is responsible for overseeing the development of guidance and policy on remedies. In pursuing the overall aim set out above, the Remedies Standing Group considers issues of policy and procedure, reviews learning points arising from current inquiries and considers findings from remedies research and developments in international practice. The

Remedies Standing Group has six scheduled meetings a year and may, in addition, meet on an ad hoc basis.

- 4.35. The activities listed above are likely to require the equivalent of 1 to 1.5 full-time equivalent (FTE) staff in total (circa 20 to 30 days per month) but this requirement is spread among several staff members with particular responsibility for remedies.

***Objective 3: Conduct fair and transparent processes—led by Roland Green, Chief Legal Adviser***

- 4.36. The aim of this objective is to ensure that inquiries are conducted according to fair and transparent processes, and having regard to procedural guidelines.
- 4.37. The CC must publish advice and information on its conduct of inquiries and appeals, and conduct inquiries fairly, impartially, and transparently, giving reasons for its decisions. It must do so not only for legal reasons but also to enable the CC to take the right decisions and maintain its reputation as a high class regulatory body. It means the CC needs:
- (a) to determine its rules of procedure, prepare and publish informative guidance as to its internal processes, and how it expects to conduct inquiries and appeals, and regularly to review and update such published rules, procedures and guidance as appropriate;
  - (b) to maintain and develop a culture among the members and staff that recognizes the overriding importance of fairness to parties and impartiality, independence and transparency in the conduct of inquiries and appeals; and
  - (c) to apply these principles during inquiries.
- 4.38. In particular, this year, Objective 3 intends to:

<b>Guidance</b>	Continue to develop the CC's guidance and rules to reflect practical experience in the conduct of inquiries and feedback from external stakeholders .
	Publish revised procedural guidance on the conduct of merger inquiries and price control appeals made under the Communications Act 2003.
	Publish revised Market Investigation Guidelines on the conduct of market investigations and changes to the process of the CC required by the legislative changes mentioned in paragraph 4.10.
<b>Inquiry procedures</b>	Continue to keep under review the application of the CC's guidance and rules to ongoing inquiries.
<b>Feedback following completed inquiries</b>	Carry out lessons learned reviews following inquiries.
<b>People</b>	Develop the CC's internal training programme to ensure that its policies and procedures are understood and disseminated among members and staff, including those for handling their outside interests.

### *Budget and resources*

- 4.39. Most of the activity involved in conducting fair and transparent process is undertaken by the individual inquiry groups, with risk management overseen by SMT.
- 4.40. The Heads of Profession, together with HR, have responsibility for making sure the CC has staff with the right skills, training and motivation.
- 4.41. The Practices and Procedures Group has oversight of most of the rule and policy-making activity associated with this objective, although certain activities are also relevant to the Analysis Group, Remedies Standing Group and Finance and Regulation Group. Approximately six days per month of staff time is allocated to the Practices and Procedures Group activities.

### ***Objective 4: Ensure no undue burden on business or taxpayers—led by Rachel Merelie, Senior Director, Inquiries***

- 4.42. The aim of Objective 4 is to ensure that the CC does not place an undue burden either on business or on taxpayers, subject always to making robust decisions on analysis and remedies and conducting processes fairly and transparently. To enable the CC to gain a better understanding of the burdens it places on business it carries out a Stakeholder Perception Survey every two years; the last survey took place in 2010.<sup>6</sup> The feedback received from the survey has contributed to setting this objective.
- 4.43. Objective 4 has three key areas of focus:
- (a) Making the CC's investigations more efficient by ensuring that:
- (i) on merger inquiries, provisional findings are reached by week 15 and that extensions to the 24-week timetable are minimized;

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<sup>6</sup> For more information see [www.competition-commission.org.uk/our\\_role/analysis/stakeholder\\_report\\_2010\\_final.pdf](http://www.competition-commission.org.uk/our_role/analysis/stakeholder_report_2010_final.pdf).

- (ii) on market investigations, the streamlined process piloted on the local bus services and movies on pay TV market investigations is refined and embedded on future investigations as appropriate; and
  - (iii) on regulatory inquiries, the outcomes of the review into the telecoms appeal process are implemented.
- (b) Ensuring that the CC's inquiries are completed within budget and that budgets for each inquiry are minimized as far as possible by:
- (i) ensuring that the analytical framework (for decision and remedies) chosen is not too costly;
  - (ii) ensuring that the procedures, including those relating to transparency and disclosure, are not too costly;
  - (iii) making the best use of resources, including the use of more flexible inquiry teams with good team working and clear shared goals; and
  - (iv) ensuring that appropriate budgetary controls are in place throughout inquiries.
- (c) Minimizing, as far as possible, the burdens placed on business:
- (i) Optimizing, within the current competition regime, the transfer of information from the OFT, sectoral regulators, or the Competition Appeal Tribunal (CAT), to the CC.
  - (ii) Ensuring that information requests are appropriately focused.
- 4.44. Many of the areas of focus described above are ongoing activities which will be carried out through the normal operation of the business. It is particularly important that lessons are learned from ongoing inquiries, including from feedback gathered both internally and externally. The review meeting held at the end of each inquiry discusses lessons learned which can then be taken forward by the appropriate committee or staff team.
- 4.45. In particular, this year, Objective 4 intends to:

<b>Inquiry procedures</b>	Embed streamlined market investigation procedures. In 2011/12 the streamlined procedures piloted on the local bus services and movies on pay TV market investigations will be reviewed. Appropriate lessons will be learned for future market investigations.
	Pilot revised telecoms appeals procedures. In 2010/11 the CC's process for carrying out telecoms appeals was reviewed. A number of recommendations were put forward with the aim of making the process more effective and efficient. These recommendations will be piloted on any new appeals which are referred to the CC in 2011/12.
	Improve budgetary control of inquiries. In 2010/11 an internal audit review of inquiry budgeting was carried out and certain changes implemented which will be embedded during 2011/12.
	Review burden on business. As reported in last year's plan, significant work has already taken place to improve communication and coordination between the CC and the OFT and to focus CC investigations on key issues. The CC will make further efforts in 2011/12 to focus CC information requests as far as possible.

### *Budgets and resources*

- 4.46. Most of the activity involved in ensuring that the CC does not place an undue burden either on business or taxpayers, is undertaken by the individual inquiry groups, with risk management overseen by SMT.
- 4.47. The Heads of Profession, together with HR, have responsibility for making sure the CC has staff with the right skills, training and motivation.
- 4.48. The Practices and Procedures Group has oversight of most of the activity associated with this objective, although certain activities are also relevant to the Analysis Group and the Remedies Standing Group.

### ***Objective 5a: Ensure positive engagement with CC stakeholders and external representation of the CC—led by John Kirkpatrick, Director of Policy***

- 4.49. The aim of Objective 5a is to ensure that the CC pursues a structured and strategic approach to communication with its stakeholders.
- 4.50. The CC will continue to look for ways in which it can contribute to public debates about the importance of competition policy, communicating its key messages to competition practitioners, the business community and consumers through a variety of methods—including hosting and participating in seminars, round tables and competition events, meeting bilaterally and multilaterally from time to time to discuss developments in CC procedures and practices and developments in competition law and practice more widely, and engaging with the media on inquiry developments.
- 4.51. The CC works closely with the OFT, sector regulators, BIS, HM Treasury and other government departments on the development of competition policy and procedure, as well as with lawyers and economists in private practice and academic institutions. The current BIS proposals to merge the two competition authorities will have a significant impact on this area of work in the coming year. The CC will seek to ensure that its current institutional strengths (including in rigour, transparency and fair process) are preserved in the new competition authority, and that the new

competition regime retains full independence from government, and the ability to make decisions that are both rigorous and timely.

4.52. In particular, this year, Objective 5a intends to:

<b>Consultation on changes to the competition regime</b>	Respond publicly to BIS's consultation document on changes to the competition regime, backed up with evidence from the CC's experience of the current regime.
	Engage constructively with a wide range of stakeholders in the debate on BIS's proposals.
	Support BIS as it moves through the process of consultation, decision and implementation of the changes, by providing information, analysis and views, and playing a full part in the development of transition arrangements.
<b>People</b>	Communicate internally as the consultation process develops to ensure that staff and members are clearly informed of possible changes and have an opportunity to contribute to the CC's thinking.

### *Budget and resources*

4.53. This objective is the responsibility of the Director of Policy working closely with the Chief Executive and SMT. The Chairman, Deputy Chairmen, Chief Executive and other senior staff also contribute in varying degrees to the promotion and communication of the CC's work, and a weekly meeting is held to discuss publicity and press reporting relevant to the CC and its work. In representing the CC externally the Director of Policy is supported by the Press Office as well as by staff across the organization depending on the particular project. The policy team is usually made up of a core team, the equivalent of 2 to 2.5 FTE staff in total, but this requirement is spread across several staff members. However, given the proposals for institutional change and the consultation launched by BIS, the team has been supplemented by drawing on resources from across the CC.

### *Risks*

4.54. Any incidents that damage the CC's performance or reputation present specific risks to achieving this objective, as they would distract internal and external attention away from the key messages that the CC seeks to communicate. Such events include (but are not limited to):

- (a) the CC's reputation is damaged by public scandal, a breach of security, litigation or an inappropriate disclosure of information;
- (b) the CC's processes are not perceived to be effective or run efficiently with the result that the CC is regarded as slow and expensive; and
- (c) the CC fails to learn the lessons from recent appeals with the consequence that decisions continue to be successfully challenged on similar grounds.

4.55. The management of these risks is overseen by SMT.

**Objective 5b: Influence the development of international competition policy and implementation and learn from international best practice—led by Carole Begent, Deputy Chief Legal Adviser and Head of International**

- 4.56. The aim of Objective 5b is to ensure that the CC is abreast of and takes appropriate action in the light of developments of competition policy and best practices and influences such developments.
- 4.57. Through its participation in formal competition organizations and networks such as the OECD and the International Competition Network (ICN) and bilateral contacts with overseas competition authorities, the CC participates in competition policy discussion and the development of best practices. The issues covered are varied, encompassing legal and institutional framework, economic analysis, advocacy and case-handling techniques and the contacts established enable cooperation when appropriate on case work. Such participation contributes to the CC's understanding of developments which in turn contributes to the CC achieving many of its objectives, notably 1, 2, 3, 4 and 5a and supports the CC's reputation as a world class authority.
- 4.58. In particular, this year, Objective 5b intends to:

<b>International organizations and networks</b>	Contribute at OECD meetings of the Competition Committee and the Global Forum. Topics for discussion during 2011/12 include <i>Mergers and remedies, excess pricing, evaluation of merger decisions</i> . The CC will contribute to such discussions and UK submissions (prepared jointly with the OFT) in respect of topics that are pertinent to the CC's functions.
	Participate in the work of the ICN, principally as a member of the Merger Working Group, Advocacy Working Group and Unilateral Conduct Working Group. The CC contributes to the work product of these groups (the work plans for 2011/12 and the longer-term working plan are presently under consideration) which includes recommended best practices, investigative techniques handbooks, guidance handbooks, teleseminars and workshops.
	Continue its membership of the EU Merger Working Group, a forum intended to promote cooperation, convergence and best practice among merger control authorities within the EU.
<b>Competition authorities overseas</b>	Engage with other competition authorities on a bilateral basis and through these contacts on an ad hoc basis, respond to requests for and receive assistance that is beneficial to the CC's casework and policy development.
<b>People</b>	Communicate internally discussions and developments of relevance to the CC, through reporting to Council, the Analysis Group, Practices and Procedures Group, Remedies Standing Group and to staff.

**Budget and resources**

- 4.59. Most of the activity involves the Chairman, Deputy Chairmen, and members from the senior team (notably economists, financial analysts, remedies managers and lawyers). The strategy and the priorities are approved by Council. Implementation involves the support of CC staff from all the professional teams.

- 4.60. The participation by individual staff members contributes to the development of those individuals and to the wider dissemination of competition policy developments throughout the organization.
- 4.61. Dissemination is achieved through regular reporting to Council, the Analysis Group, Practices and Procedures Group, Remedies Standing Group and to staff.

### *Risks*

- 4.62. A specific risk to this objective is that communication within the CC is insufficient to ensure that the CC is abreast of latest developments and fails to apply best practice and learning from other international authorities on analysis and procedure.
- 4.63. The management of this risk is overseen by SMT.

### ***Objective 6: Support the organization by ensuring efficient and effective services and support mechanisms are in place—led by Rebecca Lawrence, Director of Corporate Services***

- 4.64. The aim of Objective 6 is to ensure efficient and effective corporate services and back office support to the rest of the organization. Additionally this objective deals with corporate governance, business continuity, internal audit functions, risk management, security, data handling and information security. The Director of Corporate Services is the CC's Departmental Security Officer and Senior Information Risk Officer.
- 4.65. The Director of Corporate Services manages this objective, consults the Corporate Services Review Group on policy changes and reports to SMT. Additionally, there is accountability for its delivery to Council and the Audit Committee (in particular on risk management and security) and Remuneration Committee.
- 4.66. The Corporate Services team also works with BIS and the Cabinet Office to ensure that the Government's transparency and governance agendas are taken forward. Additionally the team is actively engaged with BIS in identifying opportunities to deliver back office services more cost-effectively with a focus on IT, HR, procurement and Facilities.
- 4.67. In particular, this year, Objective 6 intends to:

<b>Accreditation</b>	Work towards BS 25,999 and ISO 9001 accreditation for business continuity and management services within the corporate services administrative support team.
	Gain the Customer Services Excellence (CSE) standard for the Corporate Services team.
<b>Comply with central government initiatives</b>	Benchmark cost and efficiency data with other parts of central government via the Operational Efficiency Programme and other government initiatives.
	Work with central government in terms of some of its key initiatives including the Efficiency Reform Group (ERG) controls, <sup>7</sup> the government transparency agenda; BIS's estates rationalization programme and BIS's commercial strategy programme.
	Work to enhance current corporate governance, risk management, security, annual reporting, data handling and assurance measures and to implement good practice where appropriate including piloting the HM Treasury Managing Risk of Financial Loss toolkit with other BIS partners and working with BIS to develop the governance of its arm's length delivery partners.
<b>Share services</b>	Seek to share back office services with other organizations as both a provider and a receiver to reduce costs and improve the quality of the service, and to ensure that all services are effectively procured to achieve value for money.
<b>Accommodation</b>	Ensure that any vacant space within Victoria House is occupied by tenants and to work in partnership with the London Property Vehicle and BIS's estates rationalization programme.
<b>IT</b>	Ensure Information and Communication Technologies (ICT) business resilience plans are effective and complete the final stages of testing.
	Ensure that the CC's ICT systems fully utilize new technology to deliver a cost-efficient, effective and secure service to the CC and its customers.
<b>People</b>	Implement the equality strategy to ensure that the CC complies with the requirements of the Equality Act and best practice.
	Develop staff and member skills by creating a comprehensive training programme covering the core competition curriculum—using the ICN hypothetical merger case study. HR will continue to provide a range of professional development opportunities open to all staff.

### *Budgets and resources*

4.68. The Corporate Services team consists of approximately 40 staff working in Information Services (including IT, Information Centre and Publishing), Facilities, Security, Finance and Procurement, Human Resources and Internal Communications (HR), Planning and the Members Support Unit. Corporate Services staff account for 18 per cent of the CC's total salary budget. The Corporate Services

<sup>7</sup> See the Annex, [Section 7](#), for more detailed information.

Management Team meets approximately every six weeks to ensure that key objectives are delivered.

- 4.69. The Director of Corporate Services is responsible for a budget of £8.3 million a year.<sup>8</sup> Approximately £1.8 million is spent on staffing and the remaining £6.5 million is spent on running costs including accommodation (£5 million) and a range of services including IT remote access, training, recruitment, scanning, photocopying, publications, catering and transcription services as well as a number of projects. Corporate Services has continued to make savings year on year. In 2010/11, the Corporate Services team made savings of £200,000 mainly on staffing costs and general administration. The team will endeavour to deliver further savings in 2011/12. Additionally the Corporate Services team has generated £3.7 million of income through leasing accommodation and the provision of shared services to the CC's tenants and others.

### *Risks*

- 4.70. The main specific risk to achieving Objective 6 is that Corporate Services has been reducing its headcount and costs steadily over the last few years, as well as increasing its workload through shared services; this workload pressure will continue to be carefully monitored in 2011/12.
- 4.71. Looking forward, another key risk will be ensuring that the team can effectively contribute to the development of new government cost-saving initiatives to ensure that the CC's business and operational needs are met and that value for money is achieved.
- 4.72. The management of these risks is overseen by SMT.

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<sup>8</sup> 56 per cent of this budget covers the CC's accommodation costs.

## 5. Background and context of the CC's work

- 5.1. The CC is an independent non-departmental public body which, together with the OFT and the sector regulators, and in conjunction with the CAT, operates the UK's competition regime. Its main aim is to carry out in-depth inquiries into mergers, markets and aspects of the regulation of the major regulated industries (including utilities, postal services, railways, airports, air traffic control and financial services).

### *The CC's main powers*

- 5.2. The CC's main powers and duties stem from section 45 and Schedule 7 of the Competition Act 1998, as amended by the Enterprise Act 2002 (EA), and Parts 3 and 4 of the EA. It also has powers and duties under several other pieces of legislation as listed below:

Competition Act 1980	Enterprise Act 2002
Airports Act 1986	Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003
Gas Act 1986	Communications Act 2003
Electricity Act 1989	Energy Act 2004
Water Industry Act 1991	Water Services etc (Scotland) Act 2005 (Consequential Provisions and Modifications) Order 2005
Electricity (Northern Ireland) Order 1992	Electricity and Gas Appeals (Designation and Exclusion) Order 2005
Railways Act 1993	The Water and Sewerage Services (Northern Ireland) Order 2006
Airports (Northern Ireland) Order 1994	Legal Services Act 2007
Gas (Northern Ireland) Order 1996	
Competition Act 1998	
Postal Services Act 2000	
Transport Act 2000	
Financial Services and Markets Act 2000	

### *The work and role of the CC*

- 5.3. All of the CC's inquiries are undertaken following a reference made by another authority, most often the OFT (which refers mergers and markets), or one of the sector regulators (which can refer markets within their sectoral jurisdictions or make regulatory references in relation to price controls and other licence modifications) or as a result of an appeal from a decision of one of the sector regulators. Further information about each of these areas of work is given below.

#### *Mergers*

- 5.4. Under the EA, the OFT can review mergers to establish whether there is a realistic prospect that they will lead to a substantial lessening of competition (SLC). In such cases, the OFT must refer the merger to the CC for in-depth investigation unless certain exceptions apply, for example, it obtains undertakings from the merging parties to address its concerns, or the merger meets the de minimis criteria.

- 5.5. In order to qualify for investigation by the OFT a merger must meet all three of the following criteria:
- two or more enterprises must cease to be distinct;
  - the merger must not have taken place already, or must have taken place not more than four months ago; and
  - either of the following must be true:
    - the business being taken over has a turnover in the UK of at least £70 million; or
    - the combined businesses supply (or acquire) at least 25 per cent of a particular product or service in the UK (or in a substantial part of the UK), and the merger results in an increase in the share of supply or consumption.
- 5.6. Because of these last two tests, many acquisitions of smaller businesses do not qualify for investigation.
- 5.7. In exceptional cases where public interest issues are raised, the Secretary of State may also refer mergers to the CC.
- 5.8. The CC is usually required to decide whether a merger results, or is likely to result, in an SLC. (In exceptional cases, where the Secretary of State intervenes, it may also have to consider specified public interest considerations.)
- 5.9. Where an inquiry is referred to the CC for in-depth investigation, the CC has wide-ranging powers to remedy any competition concerns, including preventing a merger from going ahead. It can also require a company to sell off part of its business or take other steps to improve competition. Historically, the CC has required remedies in almost half of merger cases.
- 5.10. Consideration of feasible remedies starts when possible competition issues are identified and then enters a focused phase of consultation after publication of provisional findings. After publication of the final report, the CC is responsible for implementing the remedies through an order or undertakings. There is no statutory time frame for this implementation phase and timing can vary substantially depending on the complexity and scope of the remedy and the number of parties involved. Where remedies involve divestiture, as in the case of over 80 per cent of mergers requiring remedies, the CC also supervises the sale process to ensure that an appropriate divestiture is made to a suitable purchaser.
- 5.11. The CC may also be required to review existing undertakings or orders for possible variation or cancellation where the OFT has identified a significant change in circumstances. This may involve a major project, such as a review of Centrica's undertakings governing the Rough gas storage field, or be confined to revisions of a relatively limited nature.

### *Market investigations and regulatory references*

- 5.12. The EA enables the OFT (and the sectoral regulators) to investigate markets that are uncompetitive and, if they are concerned that there may be competition problems, to refer those markets to the CC for thorough investigation.

- 5.13. In market investigations the CC has to decide whether any feature or combination of features in a market prevents, restricts or distorts competition, thus constituting an adverse effect on competition (AEC). If the CC concludes that this is the case, then it must seek to remedy the problems that it identifies. The CC has extensive powers to address competition concerns in a market. Historically, the CC has required remedies in virtually all market investigations.
- 5.14. The CC's role in regulatory references is dictated by the relevant sector-specific legislation. Companies regulated under the gas, electricity, water and sewerage, postal services or railways legislation or providing air traffic services generally have a formal instrument (a licence) setting out the terms of their operation. If a regulated company does not agree to a modification of its licence proposed by the regulator, the regulator must refer the question to the CC. The CC considers whether any matter referred to in the reference may be expected to operate against the public interest and, if so, whether this could be remedied by modifications to the licence. Some regulatory regimes also provide for a right of appeal to the CC against price controls applied to the company. In 2010/11 the CC received a greater number of regulatory inquiries than in previous years, and is preparing for the possibility of further regulatory referrals in 2011/12.
- 5.15. The CC also has two roles under the Financial Services and Markets Act 2000 (FSMA). The first concerns the rules, guidance and statements of principle made or given by the Financial Services Authority (FSA) and the second relates to the regulatory provisions and practices of recognized investment exchanges and recognized clearing houses.<sup>9</sup> The CC has a similar role under the Legal Services Act 2007 in relation to the regulatory arrangements that govern the provision of legal services, where it reports to the Lord Chancellor.

#### *Code modifications and Communications Act appeals*

- 5.16. The CC has an appeal function following decisions by the Gas and Electricity Markets Authority to modify certain energy codes under the Energy Act 2004 and in relation to price control decisions by Ofcom, following a reference by the CAT under the Communications Act 2003.

#### ***Appeals to CC decisions***

- 5.17. The CC's decisions on inquiries are subject to judicial review either by the CAT (in the case of decisions on merger and market investigations) or by the High Court (in the case of most decisions on regulatory inquiries). There has been a significant increase in the last few years in the number of appeals brought against the CC's decisions although at present the CC is not involved in any litigation. In general the risk of legal challenge at various stages in inquiries appears to have increased significantly in the last couple of years.
- 5.18. During 2010/11 the CC has been involved in the following appeals against its decisions.

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<sup>9</sup> The OFT is responsible for keeping these matters under review and reporting on whether one or more rules, regulatory provisions or practices may have a significantly adverse effect on competition. Any report made by the OFT must be sent to the CC. The CC must investigate the subject matter and if it concludes that there is an AEC, it must also state whether it considers that the effect is justified and, if not, state what action HM Treasury ought to direct the FSA to take. HM Treasury will then consider whether to direct the FSA to take action.

- 5.19. In June 2010 the Court of Appeal allowed the CC's appeal against the finding of the CAT that as a result of apparent bias in the BAA market investigation substantial parts of the CC report should be quashed. The Court of Appeal found that, while there had been apparent bias on the part of a member of the inquiry group at a late point in the inquiry, it had not affected the decision of the inquiry group. The Court of Appeal ordered that the report be reinstated. On 17 February 2011 the Supreme Court refused BAA leave to appeal against the decision of the Court of Appeal.
- 5.20. On 21 May 2010 the CAT gave judgment in *Stagecoach v Competition Commission*. The litigation followed the CC's investigation of the acquisition by Stagecoach of Preston Bus. The CAT allowed Stagecoach's appeal in part. The CAT agreed with the CC that the acquisition gave rise to an SLC but found in favour of Stagecoach in relation to a number of findings of fact relevant to the choice of counterfactual. Consequently, the CAT upheld in part Stagecoach's challenge to the proportionality of the CC's remedy. The CC and Stagecoach subsequently agreed that it would nevertheless be appropriate to proceed with the divestment of Preston Bus in accordance with the CC's report and the terms of the Final Undertakings Stagecoach had given to the CC. In these circumstances the CC decided not to appeal against the CAT's decision. The CC's remedy has since been given effect.
- 5.21. The CC has considered the judgments in all its appeal cases and has reviewed relevant aspects of its procedures and analysis in the light of the judgments. The results of the Conflicts Review have been published on its website along with a revised guidance policy for members and staff.<sup>10</sup> The recommendations from the review have been implemented and an assessment of their effectiveness will be made once a year by Council.

## **6. Government structural reform priorities**

- 6.1. The Coalition Government has set itself a number of key targets that are relevant to the UK's competition regime; these are set out in BIS and HM Treasury's Business Plans 2011–2015 and take the form of structural reform priorities (SRPs). These targets are detailed below.

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<sup>10</sup> [www.competition-commission.org.uk/our\\_role/analysis/101207\\_final\\_report\\_on\\_policy\\_on\\_conflicts.pdf](http://www.competition-commission.org.uk/our_role/analysis/101207_final_report_on_policy_on_conflicts.pdf).

<i>Department</i>	<i>Source</i>	<i>Priority</i>	<i>Action</i>
<b>BIS</b>	SRP 6	<p>Stimulate enterprise and trade to drive the rebalancing and private sector growth we want to see:</p> <ul style="list-style-type: none"> <li>Boost enterprise and make this the decade of the entrepreneur. Help small- and medium-sized businesses start and thrive through better business support, improved access to finance and stronger competition, with fewer market barriers to entry, creating a more entrepreneurial culture.</li> </ul>	<p>6.4 Ensure that the UK has world-class competition frameworks:</p> <p>i. Review competition law and the roles of sector regulators with competition powers, including the CC and OFT.</p> <p>ii. Consult on competition law and the roles of sector regulators with competition powers.</p> <p>iii. Analyse consultation responses and develop final review of competition institutions and competition law.</p>
	SRP 8	<p>Remove government as an obstacle to growth while ensuring responsible corporate behaviour:</p> <ul style="list-style-type: none"> <li>Create a positive business environment. Create a business environment that supports long-term investment and sustainable growth, reducing regulation, creating more flexible labour markets, reforming corporate governance and ensuring that intellectual property laws promote commercial innovation.</li> </ul>	
	SRP 9	<ul style="list-style-type: none"> <li>Protect and empower consumers. Strengthen consumer protections, especially for the most vulnerable, and promote more responsible corporate and consumer behaviour through greater transparency and by harnessing insights from behavioural economics and social psychology.</li> </ul>	
<b>HM Treasury</b>	SRP 2	Secure an economy growing sustainably, more resilient, and balanced between public and private sectors and between regions.	
	SRP 2.4	Work with BIS and other partners to set out a cross-government framework for supporting strong, sustainable and balanced growth domestically and in the EU.	

## **7. Efficiency Reform Group controls**

### ***Background***

- 7.1. Following the general election in May, the Government implemented specific restrictions on expenditure on IT, communications, consultancy, property leases, recruitment, pay and procurement as part of its efficiency programme. During 2010/11 the CC has worked closely with BIS to ensure that it has complied with the relevant restrictions. Going forward, the CC will continue to work closely with BIS, to work within ERG controls and any delegations made available to the CC.
- 7.2. Additionally the CC will continue to deliver its core objectives whilst delivering additional savings to achieving the administration budget targets in place.

### ***Earn autonomy***

- 7.3. BIS has introduced a number of criteria on which it will assess BIS delivery partners in terms of earned autonomy in relation to ERG controls. These are:
  - operational performance;
  - risk;
  - organizational capacity and capability;
  - management behaviours; and
  - internal governance.
- 7.4. The CC strives to ensure that its operational performance is optimized by monitoring the cost of inquiries against a benchmark figure; seconding staff out during dips in casework, seeking CSE accreditation for back office services and working in partnership with a number of organizations to deliver shared and cost-effective back office functions. Additionally the CC has reduced its operating costs from £22.5 million to £17.8 million over five years, through restructuring and re-engineering its frontline and back office working practices.
- 7.5. The CC has detailed risk management processes in place; risks are reviewed regularly by Council, SMT and the Audit Committee. Where appropriate risks are mitigated or managed.
- 7.6. The CC has strong organizational capacity and capability; the CC is a well-managed organization with sound financial and other corporate control systems and a track record of delivering world class outcomes from its competition and regulatory inquiries. Systems and processes are supported by a high-quality senior management team and professionally qualified and well-trained staff.
- 7.7. CC management has an open and sound working relationship with the BIS sponsor team and works in partnership with the team to ensure that the CC meets government expectations in relation to the effective management of the organization, including by holding quarterly meetings where a range of administrative issues are discussed.
- 7.8. The CC has strong internal governance arrangements in place. Since early 2011 the following documents have been in place:

- a new Framework Document;
- a revised Financial Memorandum;
- Code of Conduct for Council Members; and
- role profiles for key posts including the Chairman and Chief Executive.

7.9. The CC's Council is supported by an Audit Committee and Remuneration Committee which are chaired by two of the CC's three non-executive directors.

7.10. Under the above criteria BIS has assessed the CC as a low-risk organization.

### ***Efficiency Reform Group controls and delegations***

#### *Advertising and consultancy*

7.11. The CC does not have a need to spend on advertising or consultancy other than in relation to its inquiry work or to recruit. The CC publishes details of all expenditure made in this area.

#### *Strategic supplier management and complex commercial models*

7.12. The CC uses standard Office of Government Commerce (OGC) contracts (supplemented by the CC's confidentiality clauses) to manage its contracts with suppliers.

#### *IT projects*

7.13. The CC continues to seek BIS approval before spending over the BIS threshold of £1 million on IT projects including spend on consultants/contractors.

#### *Recruitment of contractors*

7.14. The CC has delegated authority to recruit contractors to work on inquiries. The CC uses its own framework agreements to employ specialist contractors to work on its inquiries (eg sector and market specialist advice, research, survey and evaluative work).

7.15. The CC seeks BIS approval before recruiting consultants to work on back office functions where the expenditure is above £20,000.

#### *Recruitment and temporary staff*

7.16. The CC's fluctuating workload means that it often needs to employ contractors or agency staff at very short notice to enable it to deliver its core inquiry work; for example, it typically receives a maximum of two weeks' notice of a merger referral. The specialized nature of many of its activities means that even if there are reductions in posts in some areas it is very likely that the CC will have to undertake recruitment in others (for example, professional and inquiry administrative staff if the CC's workload increases significantly in terms of complexity and/or volume). Many of the CC's relevant staff are properly regarded as 'front-line' (they work on the CC's core business of reporting on inquiries and delivering appropriate remedies); they are also business-critical in that the CC is unable to function effectively without them,

which jeopardizes the CC's ability to deliver inquiries to statutory timetables. The CC will ensure that its total staff numbers (expressed in FTE) devoted to inquiry work will not increase over the period relative to the budgeted numbers for 2010/11 by more than 7.5 per cent unless its workload increases significantly in complexity and/or volume, and even then by not more than 15 per cent without BIS approval. This offers some flexibility to the CC to manage fluctuations in workload and staffing requirements throughout the year; but it also provides sufficient assurance that staff costs will remain under control.

- 7.17. Wherever possible the CC seeks to recruit internally within the civil service; where appropriate it uses short-term contractors to manage temporary increases in workload rather than seeking to recruit on a permanent basis. The CC ensures that staff are recruited on the most appropriate contractual basis taking into account the type of work to be carried out and the period of time that work is required. Core roles that have significant lifespan and are unlikely to change are filled with permanently employed staff, roles that are short term in nature and/or require particular technical or specialist knowledge should be recruited through other appropriate methods, most likely as a consultant or interim contract.
- 7.18. The CC also has delegated authority to recruit to the teams from which it provides shared services including IT, Facilities, Finance and Administrative Support.

### *Property*

- 7.19. The CC does not intend to enter into a new lease, or renew its existing lease during 2011/12. The CC's first lease break is in 2019.
- 7.20. The CC, however, will seek to let out any additional space as it becomes available. The CC works in partnership with the BIS Estates Optimisation Programme and the ERG London Property Vehicle to ensure that its estate is effectively utilized.

### *Major Projects Authority*

- 7.21. No major projects are planned in 2011/12.

### *Procurement*

- 7.22. The CC commits that non-inquiry volume spend is provided for from centrally sourced contracts and approved frameworks for all common goods and services categories covered by central procurement strategies where these offer value for money and/or an existing contractual commitment is not in place. This includes office solutions, professional services, travel, fleet, learning and development, ICT commodities, advertising and media, print and print management.<sup>11</sup>

### *HR*

- 7.23. Cabinet Office agreement is secured before any redundancy schemes are offered to staff.

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<sup>11</sup> The CC's utilities are provided by the CC's landlord under its service charges.

- 7.24. Where possible, all generic learning and development is purchased through the processes being established by Civil Service Learning where these offer value for money.

*Operational excellence*

- 7.25. The CC has no plans to renew contracts or put in place upgrades to its Enterprise, Resource, Planning (ERP) systems (ie systems that support finance, HR and procurement). If, however, this becomes necessary during 2011/12 the CC will seek agreement from the Cabinet Office Operational Excellence team.

*Management information*

- 7.26. The CC ensures that any information requests from the ERG or BIS are met in a timely manner and that accurate data is submitted.