Solicitors Regulation Authority

SRA response

Options to refine the UK competition regime

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Read more about the Options to refine the UK competition regime [https://www.gov.uk/government/consultations/uk-competition-regime-options-for-further-reform] .

The Solicitors Regulation Authority (SRA) is the regulator of solicitors and law firms in England and Wales, protecting consumers and supporting the rule of law and the administration of justice. We do this by overseeing all education and training requirements necessary to practise as a solicitor, licensing individuals and firms to practise, setting the standards of the profession and regulating and enforcing compliance against these standards.

As with all of the legal services regulators, the SRA is subject to eight regulatory objectives set out in the Legal Services Act 2007. One of these objectives is to promote competition in the provision of services[1] [#note1] .

We are in the process of undertaking a significant review of our own regulatory framework and have set out the first phase of that review in our current consultation Looking to the Future [https://rules.sra.org.uk/sra/consultations/consultation-listing/code-conduct-consultation/] . Our overarching aim is to make sure that we have a system of regulation that delivers against a set of core professional principles and clear standards and which enables good, committed, lawyers and their firms to meet the diverse legal needs of an increasing number of consumers and the public.

Modernising our regulatory framework will also help to ensure effective competition in the legal services market. Effective competition is key to addressing the high levels of unmet legal need that currently exist. The public and businesses, especially small businesses, need to be able to access affordable and relevant legal services and we want our regulation to help to narrow the current gap.

We are therefore interested in the role that the wider competition regime plays in helping us to deliver these objectives.

The SRA has limited direct experience of the competition regime set out in the consultation. We have however been engaging with the CMA throughout its market study into the supply of legal services in England and Wales. We have welcomed the collaborative approach taken by the CMA and await the outcome of its work with interest. In light of this, we

have limited our comments to those areas of the consultation where we can provide an informed view.

Markets and mergers

We support the Government's commitment to exploring whether there are improvements and refinements that can be made to the existing arrangements in order to ensure that the competition regime is as effective and efficient as possible. Effective competition, supported by an effective and credible enforcement regime is essential for delivering real benefits for both businesses and individual consumers.

We do not have any detailed comments to make on the section of the consultation that deals with proposals to refine the phase 2 decision making arrangements, or the constitution of the CMA panel. Other respondents with direct experience of these processes and procedures will be much better placed to respond to the specific consultation questions. However, we would actively support the introduction of changes that help to support robust, timely, and proportionate decision making, delivered by an independent and impartial CMA panel (or panels).

Independence of professional regulation in the public interest – independent from both the profession and the Government - is key in developing and maintaining public confidence. This is no different in the regulation of competition issues. Further, given the cross cutting nature and significance of competition issues it is important to have in place a framework which sits outside of sector specific regulation.

In terms of the options set out in the paper for reducing the time taken for the end to end process for market investigations, our own experience of regulation and enforcement would lend support to option 3 as the most appropriate of those set out. Transparency is often more appropriate than an arbitrary or one size fits all process or prescriptive timeline. From a regulatory perspective, we consider that inflexible legislation that prescribes processes and timelines also limits the ability of any regulator to calibrate their process to the particular circumstance.

The consultation asks whether the Government should amend the powers of the CMA to allow it to revisit remedies imposed following market investigations where they are shown not to be working. We strongly agree that there is merit in considering extending the CMA's powers in this way and that the ability to review and update previous decisions is part of proportionate regulation.

The consultation also seeks views on a range of options for streamlining current procedures relating to mergers. We do not have any detailed comments on the specific questions asked in the consultation, but would strongly support any proposals that reduce the regulatory burden on

businesses throughout any assessment, whilst retaining the robustness of the process.

Changes to CMA powers to support more effective enforcement

The consultation seeks views on introducing a new set of fining powers for the CMA and amending the process and basis for one further set of fines. We support the Government's proposal to allow for a parallel fining power and would agree with the application of the civil standard of proof in respect of this fining power. We believe that using the civil standard of proof is the correct approach to public protection and have made our views on this clear in relation to our own disciplinary work. Appropriate fining powers are an effective regulatory tool, supporting prompt and targeted action.

We do not have any specific comments regarding the range of options for amending the level of fine set out in the consultation, nor on the appropriate level of fine that should be introduced. However, based on our own experience we would seek to emphasise the importance of consistency in fining levels. Successive primary legislation has left the SRA with wide discrepancies in terms of its disciplinary and adjudication processes for different types of law firms and this causes a number of issues - not least in terms of fairness and a level playing field for those who are subject to enforcement and disciplinary matters.

1. Legal Services Act (2007) Regulatory Objectives [http://www.legislation.gov.uk/ukpga/2007/29/section/1]