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Dear Duncan

## **A Competition Regime for Growth: A Consultation on Options for Reform**

The Financial Services Consumer Panel welcomes the opportunity to respond to this consultation. Our views below are based on our experience of and involvement with financial services markets. We support stronger competition and effective competition powers being applied to this market to overcome significant market failures and deliver better outcomes for consumers.

### A Stronger Markets Regime

We support the extension of super-complaint powers to SME bodies and propose that it be extended further. The super-complaint power under the Enterprise Act should be more broadly defined if it is to be applied effectively to financial services. The current definition of “consumer” excludes those carrying on a business.<sup>1</sup> In the present context, this definition would leave exposed those non-financial businesses that are not given protection by other relevant legislation, such as that for consumer credit, by competition policy, by redress mechanisms such as the Financial Ombudsman Service, or by conduct regulation.

In practice, all but the smallest non-financial enterprises are left unprotected. SMEs and larger “mid-capitalisation” companies that seek external finance are heavily reliant on banks and other financial services.<sup>2</sup>

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<sup>1</sup> “consumer” means any person who is—

- (a) a person to whom goods are or are sought to be supplied (whether by way of sale or otherwise) in the course of a business carried on by the person supplying or seeking to supply them; or
- (b) a person for whom services are or are sought to be supplied in the course of a business carried on by the person supplying or seeking to supply them;

and who does not receive or seek to receive the goods or services in the course of a business carried on by him.

<sup>2</sup> “.. SMEs that do seek external finance are almost entirely reliant on banks, in the form of bank loans, overdrafts or other working capital products such as invoice discounting and factoring. ...Mid-sized firms .. defined .. as having a turnover of £25 million to £500 million ... tend to be largely reliant on banks for external finance”. “Financing a Private Sector Recovery”, Cm 7923, July 2010, HM Treasury and BIS, paragraphs 3.7, 3.11 and 3.12.

As a step towards addressing this underlap the Panel proposes that the Enterprise Act definition of consumer be widened to include representatives of non-financial businesses (not necessarily restricted to SMEs) for the purpose of submitting super-complaints about financial services.

### Concurrency and the Sector Regulators

We support the extension of concurrent powers to the new financial services regulator, the Financial Conduct Authority and the proposal at (b) that the CMA should be tasked with acting as a central resource for the sector regulators on competition cases. The new CMA's role would be particularly valuable in providing support and additional resource to the FCA in developing its competition role, helping to overcome capacity constraints and lack of competition experience. The CMA's proposed co-ordination role (c) should assist in consistency of decision making and ensuring cross-sectoral issues are dealt with appropriately.

However, we would not want to see any fetter on, or precedence given, to the financial sector regulator's use of its range of powers as suggested at a). The regulator should be free to utilise its expertise in determining what is the appropriate response to any particular issue. The new financial services regulator may determine that the best way to fulfil its consumer protection objectives requires immediate intervention, conditions on licence or conduct, or exceptionally price control, in preference to its competition powers, in order to better deal with consumer detriment.

## Scope, Governance and Objectives

The CMA's high level objective to keep economically important markets or sectors under review is likely to have particular significance in relation to financial markets, where necessary Government intervention has resulted in greater concentration and significant advantages to the bigger players in the market. We support this objective.

We will respond in more detail to the consumer landscape consultation. Without being clear about the changes proposed it is difficult to comment on whether consumer powers or functions should be available to the CMA. As the CMA will have an adjudication role and a competition focus this may not be the natural place for these powers and functions to fit.

We will look closely at the forthcoming consumer landscape review to ensure that it does not negatively impact on consumer representation and advocacy. The market investigation powers of the OFT have supported good consumer outcomes and we will need to be assured that those charged with this responsibility in the future have the resources, the expertise and statutory authority to conduct them and secure effective remedies.

Similarly while we can see the case for a single enforcement body and value the work of the Trading Standards Service, we will be looking for detailed proposals about the powers, resources and mechanisms for ensuring consistency and the authority to act in relation to large scale national or multi-national issues to assure us that the new arrangements will be effective.

Yours sincerely,

Adam Phillips  
Chairman