



*Association of Mortgage Intermediaries' response to FCA Mission:
Our Approach to Competition*

This response is submitted on behalf of the Association of Mortgage Intermediaries (AMI). AMI is the trade association representing over 80% of UK mortgage intermediaries.

Intermediaries active in this market act on behalf of the consumer in selecting an appropriate lender and product to meet the individual consumer's mortgage requirements. Our members also provide access to associated protection products.

Our members are authorised and regulated by the Financial Conduct Authority (FCA) to carry out mortgage and insurance mediation activities. Firms range from sole traders through to national firms and networks, with thousands of advisers.

Questions

Q1. Do you have a clear understanding of the FCA's statutory remit, competition powers and aims in advancing its competition objective? If no, what more could we do to explain our competition remit and powers?

We note that these questions are based on the presumption that any disagreement suggests a lack of understanding by the industry. The absence of an inward-looking regulator has meant the potential for this paper to openly consider feedback, be collaborative and forward-thinking has been diminished. Our view is that this paper is the first time that any direct focus has been given to set out how the FCA is addressing its competition objective and applying its powers, that were given to it five years ago.

We are concerned that the FCA does not itself have a clear understanding of its statutory remit, competition powers and aims in advancing its competition objective. The addition of this objective in 2013, whilst separate, does not warrant siloed resources nor an increasingly disproportionate focus on competition alone. Whilst we agree with the FCA on "what good looks like", we do not believe that the FCA has struck the right balance across its objectives. The FCA should not be considering itself "as a competition regulator", as referred to in this paper. We agree with the statement that the FCA has "a duty to promote effective competition in the interests of consumers so far as is compatible with meeting our objectives to protect consumers and enhance market integrity. This means we consider competition across all our work." The latter sentence is the crux of how the FCA should interpret its competition objective, however it is not being applied in this way in practice.

The Financial Services and Markets Act 2000 (FSMA) sets out that "the matters to which the FCA may have regard in considering the effectiveness of competition in the market" include "the ease with which new entrants can enter the market" and "how far competition is encouraging innovation". Yet the FCA believes that "an important aspect of our work to promote competition is supporting new and innovative players whose business models may test the boundaries of our current regulations."

This is a misinterpretation of the legislation, which in no way suggests that certain business models should be favoured and provided with focused regulatory support (paid for by authorised firms). We believe the regulator should not discourage innovation, but it should not be segmenting firms with new technological solutions and giving them easements from the rules. There should not be any deregulation where firms have less liability for the advice they provide.

A competitive market of course necessitates disruptors and whilst the legislation sets the need to consider new entrants, this does not mean that barriers to entry should be removed for a particular business model. It should not be the regulator's role to spend resources assisting technology-based new market entrants. Often run by non-financial services experts, as commercial firms they will understandably argue, as has been seen in various press articles, that the regulatory rule book, capital requirements and need for adherence through the permissions process is cumbersome. But regulation has developed from the need to protect consumers (from hard learned lessons of the past) and enhance integrity of the financial system. A market led by virtual boutique systems, with no offices, staff or capital that can quickly evaporate cannot be in the best long-term interests of consumers. Reasoned stability based on decades of learning should not be sacrificed on the altar of innovation. Certain rules which need updating in light of technological developments would of course be appropriate provided that this applies to all firms. There should not be any easements for firms who wish to bypass specific rules. A core tenet of our approach to regulation has been a level-playing field for all participants, which we consider should also be core to all work by the FCA.

For the FCA to listen to and support technology firms wanting more regulatory guidance and hand-holding through their propositions, but to take a distant approach to most regulated firms is ultimately anti-competitive. There is some recognition in this paper of how the regulator should be approaching competition, with statements such as “we do not have a remit to promote the UK's or an individual firm's competitiveness” yet these appear to just be theoretical. For firms to have one-to-one regulatory engagement in the Regulatory Sandbox and Advice Units while less and less fee-paying firms are afforded this privilege is not the intention of its statutory remit. It is a significant advantage for businesses to not need to spend resources, either internally or externally, to acquire regulatory knowledge. Cross-subsidisation of the costs of running these “free” initiatives against fee-paying firms is inappropriate. It would be fairer if the costs were recovered from the firms who wish to use it. This is exacerbated by the standard approach from the FCA call centre who routinely refer firms to the rules for them to make their own interpretation.

As part of the FCA's competition objective in “promoting effective competition in the interests of consumers in the markets for regulated financial services” (FSMA) it may consider the effectiveness of competition in the market by taking into account:

- “the needs of different consumers who use or may use those services, including their need for information that enables them to make informed choices”;
- “the ease with which consumers who may wish to use those services, including consumers in areas affected by social or economic deprivation, can access them”;
- “the ease with which consumers who obtain those services can change the person from whom they obtain them” (FSMA)

The legislation refers to “services”, not “products”. Yet this is not understood in this paper: “where information is hard to find or understand and compare, it can be difficult for consumers to understand and compare products. This can both directly harm consumers and reduce the competitive pressure on firms.” The consumer protection objective in FSMA further sets out that “the FCA must have regard to— the needs that consumers may have for the timely provision of information and advice that is accurate and fit for purpose”. Both the approach to consumers and competition papers however omit advice from the regulatory landscape, supporting a skewed view that advice, and in turn intermediaries, are a barrier to consumers making informed choices.

Finally, we request further clarification of the belief that the FCA's "powers of investigation [has been expanded] beyond those firms and activities that we currently regulate" and what scope the FCA believes it has in unregulated markets.

Q2. Are there other indicators of potential harm that we should consider in our preliminary assessments of competition?

The indicators that the FCA has identified have been mis-construed. Our concerns around how the FCA understands "barriers to entry" and a "lack of access to information" are set out in our answer to question 1.

We are also concerned how "complexity" is viewed by the regulator, where the paper paints a picture in which intermediaries do not exist. In respect of "complex products" consumers are not necessarily "more likely to end up with products poorly suited to their needs". It is worrying for a regulator to make such a generic statement without recognition of the different sectors and services provided by firms. The range of mortgage products for example, matches the greatly differing and complex needs and circumstances of consumers. Providers also have differing costs of capital, management expenses and risk appetites as well as the right to select their own profit margin, thereby providing a varied and competitive market which, whilst complex, provides more consumers with a cost effective solution. Because there is such a choice of suitable products, prices are competitive. Rates are varied according to risk meaning there is less cross-subsidisation. Simplifying the product however (e.g. CAT standard mortgages) would only marginalise a segment of the market as their needs would not be met. Intermediaries allow customers access to a greater choice as they will consider products from more than just one lender. Intermediaries make the mortgage market competitive. If the majority of, or all, consumers obtain mortgage products directly from lenders, there is a higher chance that lenders will be less competitive.

Q3. Are there other tools we could consider when designing remedy packages?

We note that the paper states that the FCA is "more likely to prioritise market studies where market characteristics indicate low levels of competitive pressure" and where "the market size or type of customer indicates harm on a significant scale or severity". We welcome clarification of which of these drivers has led the FCA to deem a mortgage market study necessary. In addition, the paper outlines that the FCA is "less likely to prioritise work in markets where market or regulatory changes are already likely to address competition concerns in the near future." This appears to be another example of hypothetical aims that do not translate into actions. The mortgage industry has repeatedly voiced that time should be allowed for the various regulatory and legislative changes to the market to be embedded, yet a call for inputs was issued before the Mortgage Credit Directive even came into effect. Whilst the competition team have been on a fishing expedition in the mortgage market these past two years, targeted supervisory work has been carried out where consumer harm has been identified. We would have expected a similar approach to have been taken by competition. We do not believe the FCA is meeting its aim to "be proportionate in our data requests" nor to "tailor requests according to the size of a firm" as vast quantities of data was requested across firms as part of this market study. There was insufficient focus on specific data which would be useful, nor was there enough consideration of the burden this would have on firms to provide (e.g. one calculated it would require a full time member of staff to spend two weeks solely on the request).

We would also question the FCA's aim to "be as transparent as possible about the basis for our conclusions, to ensure we can have a meaningful dialogue with stakeholders when we publish our interim report."

Q4. Has this document set out the FCA's approach to competition clearly? Are there other issues relating to our approach to competition that could benefit from further clarification?

This has been answered elsewhere.