



## News Release

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### CC PUBLISHES REMEDIES REVIEW

The Competition Commission (CC) has today published recommendations arising from a review of its approach to remedies in market investigations.<sup>1</sup>

The review followed two partly successful appeals to the Competition Appeal Tribunal (CAT) last year against aspects of remedies resulting from the CC's market investigations into [Groceries](#) and [Payment Protection Insurance \(PPI\)](#). In both cases, the CC's overall findings were not affected.

The Chairman of the CC, Peter Freeman, initiated the review in October 2009 and its terms of reference were to examine the way in which the CC assesses the effectiveness, timeliness and proportionality of remedies in market investigations and how the CC's reasoning is expressed in its reports. Three members of the CC, Laura Carstensen (Chair), Roger Witcomb and Professor Simon Evenett, conducted the review and were assisted by a small staff team. The CC's Council<sup>2</sup> considered the review, endorsed its recommendations and agreed proposed action in January.

Among other matters, the review found that the amount of time spent considering competition problems in the market investigations it considered did not leave enough time to consider remedies in sufficient detail during the two-year statutory timetable. The review group has therefore recommended allowing more time for the remedies phase within market investigations timetables (which will aim for completion in 18 months) giving greater scope for detailed consideration—in part by placing stricter time limits on the earlier stages of the investigation. This will allow more time for design and evaluation of remedies. The review also recommended greater focus on the mechanisms and impacts of remedies, and a more structured framework for developing, expressing and scrutinizing remedies decisions.

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<sup>1</sup>*Review of the Competition Commission's approach to remedies in market investigations: recommendations and proposed action* is available at [www.competition-commission.org.uk](http://www.competition-commission.org.uk). The review did not include the BAA inquiry, which was being appealed when it was initiated.

<sup>2</sup>The Council is the CC's strategic management board.

Chairman of the CC, Peter Freeman, said:

We often seek to review and improve our processes in the light of experience. The CAT judgments last year made it an appropriate time to do so in this case, as did the fact that the market investigation regime is relatively new. Most of these investigations have only come to fruition quite recently—and therefore so have the actions and remedies arising from them. By their very nature, these investigations give us the power to intervene in a direct and extensive manner in the operation of markets. As such, it is only to be expected that we have faced challenges from parties with relevant commercial interests when attempting to bring in significant changes. There are some lessons to be learned from our initial experiences in using these powers and in how to design and assess remedies which enable markets to function more effectively for customers.

The review identified the danger that diagnosing problems in these investigations has left too little time—in some cases—to consider fully the cure. Whilst defining the problem in the markets we investigate is clearly essential, it is just as important—and challenging—to get the subsequent measures right and backed up with robust reasoning and consideration to withstand, if necessary, any legal challenge.

This means changing our own procedures to allow us to do so but equally we must also now take a firmer line with timetables, so that assessment of competitive problems does not restrict the remedies phase.

We welcome the review group's recommendations and plan to act on them at the earliest opportunity.

It is intended that many of the proposed actions will be implemented, where appropriate, on a trial basis in the current CC market investigation into local bus services. The CC also intends to begin consultation in the near future on new guidelines for market investigations incorporating proposals on the CC's approach to remedies.

## Notes to editors

1. The CC is an independent public body, which carries out investigations into mergers, markets and the regulated industries. Further information on the CC and its procedures can be obtained from its website at [www.competition-commission.org.uk](http://www.competition-commission.org.uk).
2. Since the market investigation regime came into force under the Enterprise Act 2002, the CC has reported on nine market investigations. Five of these published final reports in the last three years, namely Northern Ireland Personal Banking, Groceries, PPI, BAA Airports and Rolling Stock Leasing. The remedies resulting from the Groceries and PPI investigations were the subject of partially successful appeals before the CAT. In a further appeal on BAA Airports, the CAT upheld the CC's decision on proportionality of remedies while supporting the appellant on the separate ground of 'apparent bias'. The CC has sought leave to appeal to the Court of Appeal on the latter judgment.
3. The CC began its market investigation into local bus services in January.

4. Biographies:

Laura Carstensen was recently appointed as a Deputy Chair of the CC (from 1 February 2010) having been a member since 2005. She was previously a partner in the law firm Slaughter and May, specializing in UK and EU competition law.

Professor Simon Evenett is Professor of International Trade & Economic Development, University of St Gallen, Switzerland and was appointed as a member of the CC in 2009.

Roger Witcomb is a non-executive director of a number of companies and was appointed as a member of the CC in 2009. He was previously Finance Director of National Power from 1996 to 2000.

Further biographical details are available from the [CC website](#).

5. Enquiries should be directed by e-mail to [Rory Taylor](#) and [John Park](#) or by ringing 020 7271 0242.