



FCA Mission – Our approach to competition

Consultation response from UK Shareholders' Association and UK Individual Shareholders' Society (ShareSoc)

We have read the document 'FCA Mission – Our Approach to Competition'. Our responses to the questions set out in the document are shown below.

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?

The strategic objective given to the FCA by parliament (summarised on page 5) is clear.

Much of the rest of the explanation of the Regulator's statutory remit, its competition powers and how it works is very confusing and unclear. The following examples illustrate this:

- The Mission statement says on Page 5 that:

Parliament created the FCA to regulate the conduct of the UK's financial services. The FCA is also the prudential regulator for all firms apart from banks, building societies, credit unions, insurers and large investment firms. These are authorised by the Prudential Regulation Authority (PRA) and regulated by both the PRA and the FCA.

From this is not clear what the regulatory role of the FCA is. There needs to be a clearer explanation of what is meant by the terms:

- Regulator
- Prudential regulator

What is the role of a 'prudential' regulator as opposed to one which regulates the conduct of the UK's financial services?

What is the difference between 'authorisation' and 'regulation'?

If the FCA works with other regulators, such as the PRA, how does it work with them to ensure competition? What is the split of responsibilities between the parties in this respect?

- On Page 9 the Mission Statement says that:

'The FCA is one of several regulators collectively tasked with managing the balance between competition and financial stability. The PRA and the Bank of England lead on financial stability issues and the PRA also has a secondary competition objective – to act so far as is

reasonably possible in a way that facilitates effective competition in the markets for PRA authorised firms carrying out regulated activities’.

Once again, it is totally unclear what this means in terms of who does what in respect of ensuring competition. What exactly is the FCA’s role?

- On Page 6 the mission statement says on P6:

From investment banking to cash savings our work across both wholesale and retail markets keeps markets open and innovative and helps consumers understand and buy the right products and services for them.

This is a grandiose claim. There is no indication that the FCA actually helps consumers to understand and buy the right products and services. Nearly all the FCA’s work appears to revolve around working with the financial services industry to try and ensure that consumers are not deliberately or unwittingly misled by those in the industry. Stating that the FCA helps consumers understand and buy the right products and services implies that the FCA is directly involved in running consumer awareness and education programmes. Such an initiative by the FCA would be excellent. However, there is no evidence that the FCA does this. On the contrary, FCA engagement with consumers appears to be very limited.

- To add to the confusion, there appears to be a serious gap between some of the principles set out in the Mission Statement and their application. On Page 9 in ‘What does good look like?’ the FCA states:

“In all markets, we want consumers to be able to buy the products and services they need, sold in a way that is clear, fair and not misleading. We also want good value products and services that meet consumers’ needs”.

This prompts comment on two current issues:

1. MIFID II – Key Information Document. We have read with dismay the misleading approach to calculating likely returns from investment products prescribed in the Key Information Document (KID) required under MIFID II and which the FCA has, apparently, sanctioned. Furthermore, it is very unclear what terms such as ‘moderate’, ‘favourable’ and ‘unfavourable’ really mean when applied to different market scenarios under MiFID II rules. Despite the FCA’s claims in its Mission Statement, its apparent sanctioning of the requirements of the KID can only lead to consumers being sold products in a way that is unclear, unfair and utterly misleading. This gulf between what the FCA says it is striving for and what it is actually doing to promote competition is, for most consumers, a withering reflection on both the competence and credibility of the Regulator.
2. British Steel Pension Fund. Front page news in the FT on 15th February reads: ‘MP’s condemn financial “vultures” who preyed on British Steel staff. British Steel pension savers were “shamelessly” exploited by “dubious financial advisers” after a

restructuring of the scheme last year according to a stinging parliamentary report that sharply criticises the Pensions Regulator and the Financial Conduct Authority'. Reports in the media indicate that many British Steel pension fund members were coerced by advisors into signing up to ongoing advisor fees and unsuitable funds characterised by high investment risk, high management charges and punitive exit fees. The only competition here seems to have been competition among financial advisors to see who can make the most from the hapless BPS members. No amount of regulation can head off all potential market abuses. However, this case, already billed as the next misspelling scandal, looks like one that was entirely preventable. How can this be compatible with the third strategic objective that Parliament gave the FCA - 'To promote effective competition in consumers' interests'?

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

Yes. The FCA should also consider the following indicators:

- **Deliberate attempts by providers to obfuscate and to confuse consumers.** Presenting product or service information in a way that is designed to confuse is a particular problem in markets which have become commoditised. In these cases there is little to differentiate the underlying product or service being offered by different providers. Mobile 'phone companies have used this technique extensively. The product / service packages are 'bundled' in such a way that it is almost impossible for consumers to identify which offering provides best value for money. The same has been true of the financial services industry for many years and continues to be so. Charges and other costs (overt and hidden) relative to the actual product (actively or passively managed fund) and other factors are all presented in a way that makes true comparison very hard - particularly when set in the context of different customer needs and wants.
- **Hospitality and other inducements.** An article in FTfm on 31st July 2017 drew attention to the fact that, despite years of pressure from regulators to stamp out excessive hospitality, entertainment remains a problem. Many financial journalists are well aware of just how much money is allocated to hospitality budgets given the extravagant all-expenses-paid trips abroad that they are regularly offered. The FT's correspondent noted:

'Helicopter Tours of New York, and Hong Kong, safaris in South Africa, trekking through Vietnam, dinners cruising down La Seine, chocolate tasting in Geneva, sailing during Cowes Week and the Roland Garros tennis tournament in Paris are just some of the events fund managers have offered journalists over the past three years....Financial advisors and clients are often invited along to these jollies.'

The FT noted that the FCA had warned fund managers in 2016 to 'stop doing business on the golf course'. However, this looks like a particularly lame plea by the Regulator. With the Bribery Act 2010 (updated in 2012) at the FCA's disposal what is stopping it taking firm action against those who use excessive hospitality (a bribe by any other name) to exert inappropriate influence, distort competition and gain unfair advantage?

- **Lack of consumer education.** In the field of savings and investments many consumers are poorly equipped to make sound judgements about the most appropriate choice of financial product for them. Standards of numeracy among most consumers in the UK are appalling. Most consumers who are financially literate are self-taught. Few consumers have any understanding of the concept of compound interest while many assume that putting money into shares is a form of gambling while purchasing a buy-to-let property is a rock solid investment.

The situation with the British Steel pension fund is a classic example of naïve (and probably, in many cases, ignorant) consumers being duped and exploited by ruthless financial advisors. The FCA needs to do more to lobby government to ensure that consumers are properly equipped to make their own financial decisions. Without this, no matter how competitive markets are, consumers will still be vulnerable to exploitation. Promoting consumer awareness and education would be a legitimate course of action under the first of the FCA's three operational objectives – protect consumers. The best way of protecting consumers is to ensure that they are capable of protecting themselves.

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

You mention the following remedies:

- Rule changes
- Publishing Guidance
- Supervision or enforcement activity
- Voluntary solutions
- Publishing data
- Market Investigation References
- Engaging with other agencies
- Not taking any action.

It would be more helpful if the FCA were to give examples of how it decides which remedy to use, why it considers it the most appropriate one or how it applies the remedy in specific circumstances. For example you say:

'In asset management, for example, with evidence of very low engagement among some investors we proposed governance changes to strengthen the duty on firms to act in investors best interests when it comes to value for money. '

This prompts the questions: what did you actually do (the statement is vague) and what has it achieved? One might also ask which of the above remedies you were applying in this case?

We are baffled by the way in which those who drafted the Mission Statement bundled 'supervision and enforcement activity' together. They seem to be very different activities. One might assume that 'enforcement' includes the possibility of the FCA taking legal action if necessary. Supervision would appear to be a very different activity. However, because there is no explanation, it is difficult to know what these remedies cover and how they might be applied.

The above comment about 'enforcement' notwithstanding, it is notable that you do not mention taking legal action as a specific remedy. As mentioned above, the FCA has The Bribery Act at its disposal to stop funds distorting market competition by using lavish entertainment to influence journalists and financial advisors so that they recommend the fund's products.

The FCA could also show more alacrity in publishing data in the form of reports. The FCA originally started its investigation to RBS's GRG division in 2013. Despite the fact that the FCA commissioned an independent report into the activities of RBS's GRG division over four years ago it has not yet been formerly placed in the public domain. Instead, in a process that can only have been damaging to the Regulator, the document has been leaked and made available only to those with the wherewithal to access it themselves on-line. To add to the apparent shambles, this has only happened following a bruising confrontation between the FCA and the TSC.

Apparent prevarication by the FCA over the publication of a report investigating claims of customer abuse serve only to reinforce perceptions that the Regulator is more concerned with protecting the interests of the industry it oversees rather than helping consumers to make the right choices and select the best suppliers. The claim to be promoting competition under these circumstances is risible.

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?

The document sets the FCA's approach to competition. However, as we have suggested, there are a number of areas in which there is a lack of clarity about the true role and remit of the FCA in respect of market competition. We are also concerned that there is a serious gap between the principles stated in the document and their practical application as we have described in our answer to Questions 1 and 3.

Finally, we would complement the FCA on some of the consumer research it commissions; the study into the asset management sector is a good example. But we do not feel that the interests of consumers are placed as high as they should be when policy responses are considered. Our responses above suggest some themes for fresh thinking here.

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