



Andrew Tyrie

Challenges ahead for the new Chairman of the UK's Competition and Markets Authority

Andrew Tyrie, the former Conservative MP and Chairman of the UK's House of Commons Treasury Committee has been appointed as the new Chairman of the UK's Competition and Markets Authority (CMA), succeeding David Currie. His appointment was approved last week following a parliamentary hearing. He will start in the post in June. Although he has a relatively unusual background for a leader of a competition authority, he brings with him a reputation for being unafraid to take on big challenges. This may be timely: he joins the CMA at a time when it is tasked both with contributing more fully to the Government's productivity agenda and managing the significant challenges that Brexit will pose.

Personal background

Andrew Tyrie was the MP for Chichester for 20 years between 1997 and 2017, having previously been special advisor to successive Chancellors of the Exchequer (Nigel Lawson and John Major). He stood down at the June 2017 General Election. Mr Tyrie was a prominent member of the backbench select committees tasked with scrutinising government, which earned him a reputation as a fierce – and feared – interrogator.

In 2010, he was elected to chair the Treasury Committee and has also served as chair of the Parliamentary Commission on Banking Standards, which investigated the causes of the financial crisis and recommended governance reforms for major financial institutions. During this time, he successfully pushed for increased personal liability for top banking executives and structural reforms for major banks, demonstrating his appetite to take on large organisations to ensure standards of conduct and accountability are upheld. In both roles, he was hands-on and took a high public profile, and it is likely that he will aim to do the same in his new role.

In these roles, he also achieved a reputation for political independence, which is likely to answer some of the questions that might otherwise be asked of an appointee so recently retired from party politics. He made clear at his confirmation hearing that he would continue with this approach.

He was on the remain side in the Brexit referendum, and had a reputation as being one of the broadly more pro-European members of the Conservative Party (notably, he was the manager of the pro-European Ken Clarke's leadership campaign in 2010 and he voted against the Government in 2017 on the issue of giving Parliament a vote on Brexit).

Outside UK politics, he was previously a Senior Economist at the European Bank for Reconstruction and Development and has held directorships at UK PLCs in the investment management and property management sectors. At his confirmation hearing he underscored that he brought to the post the experience of being a company director as well as his political experience.

Policy interests

Mr Tyrie has made much of his focus on consumers throughout his various roles to date – which will fit strongly with the CMA's remit. He noted in his response to questions from MPs on his new role that “a great deal of my work in Parliament amounted to an attempt to widen choice and freedom for the consumer, as did much of my work as a Treasury adviser”. While almost all appointees to senior roles in competition authorities speak the language of the “consumer champion”, it seems likely that Mr Tyrie will seek to do this in a high profile way. He has received strong encouragement from Parliament to do so: in the approval decision, MPs called for stronger use of the CMA's powers to protect

consumers: “The Committee’s work...has given us the impression that [the] standard of regulation and performance of regulators in the UK has been inconsistent and, at times, weak. We welcome Mr Tyrie’s willingness to see the CMA use its powers to their full extent... We urge Mr Tyrie, in his new role, to work closely with sector regulators to ensure they adopt a sufficiently proactive approach to fulfilling their responsibilities.” This recommendation is particularly significant given the “use it or lose it” exhortation attached to the concurrent competition powers granted to sector regulators.

Mr Tyrie also has a strong background in pursuing institutional reform – which may be highly relevant to the CMA over the next few years. He was instrumental in reforming the select committee system in the House of Commons and was very involved with institutional reform at both the Bank of England and the UK’s Financial Conduct Authority (FCA). He noted at his confirmation hearing that the UK competition regime had gone through significant reform in the past few years, with the uniting of the Office of Fair Trading (OFT) and Competition Commission in the CMA. While he will no doubt be conscious of the challenges of further institutional reform at a time when there will be many other demands on the CMA’s resources, there were hints at his confirmation hearing that he would not shy away from shaking up the CMA’s internal structures to make for better decision-making.

Sectoral focus

Mr Tyrie is obviously best known for his interest and work in financial services. Under his chairmanship, the Treasury Committee focused strongly on the banking sector in particular (much more so than, say, insurance) – driven in particular by the financial crisis and its fallout. In his responses to MPs’ questions, he noted that he had disagreed with the outcomes of the CMA’s banking inquiry, though he also was at pains to say that it was likely to be premature for a further review to be undertaken at present.

Notably, in his response to the Committee’s questions on his new role, Mr Tyrie also drew attention to the importance of online and digital markets, which chimes strongly with the CMA’s own recent establishment of a specialist team in this area and the focus on digital markets in the Government’s recent Consumer Green Paper. Mr Tyrie commented that “Some aspects of digital technology may inhibit competition. Many platforms tend towards monopoly or oligopoly; merger control may be less straightforward; algorithms and a high level of market transparency, far from encouraging price competition, may increase the risk of collusion”. There has been something of a recent perception that the CMA has been less vigorous (though others would say it has

been more judicious) in relation to digital markets than counterparts: Mr Tyrie’s appointment alongside these other developments signals a wish to change this position.

The Committee also quizzed Mr Tyrie on energy prices, and he will be aware of the continued focus by policymakers on the UK energy market, notwithstanding the 2014-16 CMA energy market investigation. The MPs’ approval of his appointment came with a recommendation that he engage with this market (as well as data and digital markets).

Brexit and State aid

Mr Tyrie takes office as the CMA starts to navigate the challenges of leaving the EU. While this will undoubtedly be an enormous undertaking for the CMA, it is also a landmark opportunity for the CMA to launch itself on to the international stage as a key decision-maker on complex cross-border deals and investigations into anti-competitive behaviour. Key challenges for the CMA will include: developing and maintaining effective cooperation arrangements with the European Commission, and other national competition authorities, and navigating timing and transitional arrangements without compromising on delivery.

In doing so, the CMA is bolstered by additional enforcement funding, including an extra £23.6 million to prepare for Brexit. This has enabled the CMA to pursue a recruitment drive to cope with the increased workload. The CMA estimates that it will have to review up to 50 additional merger cases per year (almost doubling current numbers), with about 6 more in-depth investigations (again doubling the current caseload), as well as an additional 5-7 complex antitrust / cartel cases per year. Even with additional funding, such increases are likely to present challenges for the authority.

It is clear that Mr Tyrie will also need all his political skills to manage a hot potato that seems likely to be passed to the CMA following Brexit – control of the new UK State aid regime. While the full shape of this regime remains uncertain (beyond indications that there is likely to be broad alignment with existing EU rules), the Government has indicated that it considers that it should be policed by the CMA. His comments during the confirmation hearing indicated that he is alive to the political challenges this is likely to pose – with the CMA possibly being asked to control important policy and spending decisions by the Government where these may constitute State aid. This is likely to be an area of heightened media interest and where the CMA’s enforcement of State aid rules may pit it against public opinion, which may be in favour of more Government financial support. The CMA has recently appointed a new Senior Director to a State aid role for the first time to help address this new challenge.

Challenges in his in-tray

Mr Tyrie joins the CMA at a time when, for some of the reasons set out above and others, the organisation faces a particularly marked set of challenges and opportunities. Among them are likely to be:

- The perception (which Mr Tyrie indicated that he shared in part) that some recent large scale market investigations (energy and banking) had not been effective. Market studies and market investigations remain a critical part of the CMA's toolkit, but the capacity to undertake them at scale may be challenged by the increase in "non-discretionary" work following Brexit (like merger reviews). Reinvigorating these regimes in this context will be an important challenge for the CMA over the next few years.
- The challenge to increase enforcement at a time of additional demands on the organisation. The CMA has materially increased its profile in bringing Competition Act 1998 (CA98) cases in the past year, with significant cases in the pharmaceutical sector taking centre stage. In each of 2016 and 2017, the CMA launched 11 investigations into anticompetitive behaviour under the CA98, 60% higher than the annual average between 2010 and 2015. Parliament has made it clear that the expectation remains that this should increase further, and Mr Tyrie has indicated that he shares this ambition.
- The operation of the CMA and the powers given to it under the CA98 are coming up for review in 2019 by the Secretary of State under the Enterprise and Regulatory Reform Act 2013. The review marks the fifth anniversary of the transfer of functions from the former OFT to the CMA. Mr Tyrie has already noted that this review may come uncomfortably soon in a period of significant change, but its timing is laid down by statute.
- Building a State aid capacity in the CMA, shaping the new legislative scheme, building political credibility and managing the political challenges.
- Managing the Brexit workload. Even with "business as usual" through the transition period and the announcement of significantly increased funding, preparing for and managing the major increase in workload from 2021 will be a major institutional challenge for the CMA.
- Managing the relationship with other regulators, in particular the European Commission, in the context of cross-border deals, large antitrust investigations

and State aid policy and enforcement; and sectoral regulators with concurrent competition powers, to ensure they use those powers effectively. Mr Tyrie will have to work hard to establish the CMA as a leading regulator in the worldwide competition law community as it moves out from under the Brussels umbrella.

- Finally, the supermarket sector has served up an early challenge in the merger context in the form of the Sainsbury's/Asda tie-up. The decision will, of course, be one for the Phase II panel appointed for the case, rather than for the Board of the CMA, but Mr Tyrie will have to manage public perceptions of the decision in such a high-profile sector.

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