

# Annual report on concurrency

2019

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## Introduction

1. This is the fifth annual concurrency report to be published by the Competition and Markets Authority (CMA) in accordance with its statutory obligation<sup>1</sup> to assess the operation of the concurrency arrangements which came into effect on 1 April 2014.<sup>2</sup>
2. The UK's concurrency regime involves competition law being applied in the regulated sectors not only by its primary competition authority, the CMA, but also by the sector regulators in those sectors for which they are responsible. Like the CMA, the sector regulators can:
  - (a) apply the UK and EU law prohibitions on undertakings engaging in anticompetitive agreements or on the abuse of a dominant market position;<sup>3</sup> and
  - (b) conduct market studies and, if appropriate, make a market investigation reference under which the CMA conducts an in-depth investigation into whether any feature, or combination of features, of a market in the UK for goods or services prevents, restricts, or distorts competition.<sup>4</sup>
3. The concurrency arrangements provide for cooperation between the CMA and the sector regulators in relation to their concurrent powers in the sectors for which they are responsible.

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<sup>1</sup> Enterprise and Regulatory Reform Act 2013, section 25(4), read together with paragraph 16 of Schedule 4.

<sup>2</sup> The concurrency arrangements were introduced in their current form by the [Enterprise and Regulatory Reform Act 2013](#) and took effect from 1 April 2014. They created a framework within which the CMA and sector regulators might more effectively work together to improve competition and competition law enforcement in the regulated sectors.

<sup>3</sup> The UK prohibitions are in Chapters I and II of the [Competition Act 1998](#), and the equivalent EU prohibitions are in Articles 101 and 102 of the [Treaty on the Functioning of the EU](#).

<sup>4</sup> The market investigation provisions are in Part 4 of the [Enterprise Act 2002](#).

**Table 1: Sector regulators and their responsibilities**

<b>Civil Aviation Authority (CAA)</b>	Airport operation and air traffic services
<b>Office of Communications (Ofcom)</b>	Broadcasting, electronic communications and postal services
<b>Gas and Electricity Markets Authority (Ofgem)</b>	Electricity and gas in Great Britain
<b>Financial Conduct Authority (FCA)</b>	Financial services <sup>5</sup>
<b>Payment Systems Regulator (PSR)</b>	Payment systems
<b>NHS Improvement (NHSI) <sup>6</sup></b>	Healthcare services in England
<b>Office of Rail and Road (ORR)</b>	Railway services
<b>Water Services Regulation Authority (Ofwat)</b>	Water and sewerage services in England and Wales
<b>Northern Ireland Authority for Utility Regulation (NIAUR)</b>	Electricity, gas, water and sewerage services in Northern Ireland

4. Competitive markets are a key driver of productivity, innovation and economic growth, providing greater choice and other benefits for consumers. These benefits can include lower prices, higher quality and incentives to efficiency and innovation. Securing competition benefits in the regulated sectors is particularly critical as not only do these sectors account for an estimated 25% of GDP, but almost every household and business in the UK relies on their services; from basic utilities like heat, light and water to financial services such as banking and insurance. The concurrency arrangements form a key part of the UK's competition regime and have an important role in enhancing competition and making markets work more effectively in the regulated sectors, thereby achieving more competitive outcomes for the benefit of consumers.

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<sup>5</sup> From 1 April 2019, the FCA also has concurrent competition powers in relation to the provision of claims management services in Great Britain.

<sup>6</sup> Since 1 April 2016, Monitor and the NHS Trust Development Authority have been operating as a single integrated organisation known as NHS Improvement.

5. In 2014, the government introduced an enhanced concurrency regime, with several new mechanisms to facilitate greater and more effective use of competition enforcement powers in the regulated sectors. In particular, this regime encourages closer cooperation between the CMA and the regulators, allowing them to exploit the complementarity of skills that each possess, with the CMA's extensive experience of the procedural and substantive issues involved in bringing cases under the Competition Act 1998 and the economy-wide perspective, and the regulators' detailed knowledge and technical understanding of the sectors for which they are responsible.
6. The purpose of this, the fifth annual concurrency report, is to assess the operation of the concurrency arrangements in the regulated sectors from 1 April 2018 to 31 March 2019.
7. This year's report takes a more streamlined approach compared to that used previously. Rather than separate chapters for each regulator and the CMA, it summarises the relevant work carried out by each regulator and the CMA by type of work, signposting where further details can be found. The report first sets out the Competition Act 1998 enforcement work that has been undertaken in the regulated sectors in this reporting period, before outlining the markets work that has been carried out (both under the Enterprise Act 2002 and under specific sector regulation). The report then provides an overview of other work carried out to promote competitive outcomes in the regulated sectors as well as wider cooperation between the CMA and the sector regulators.
8. The CMA set out in the 2018 report that there had been continued progress in the effectiveness of the concurrency regime, both in terms of the number of new cases being opened under the Competition Act 1998 and in terms of ongoing levels of cooperation between the CMA and the regulators. Indeed, last year's report explained how there had been a demonstrable step-change in the breadth and depth of the relationships between the CMA and the regulators.
9. That positive progress has been maintained this year, with a particularly good focus on case delivery. There were seven ongoing cases at the start of the reporting period, three of which have now been closed with an infringement decision having been reached. This is significant, because prior to this reporting period there had only been two

infringement decisions since the start of the concurrency regime in 2014.<sup>7</sup>

10. Further, during the reporting period, there has been a good level of new Competition Act 1998 cases, with regulators opening five new cases (one more than in the previous reporting period).
11. However, as the CMA has indicated in previous reports, concurrency should not solely be evaluated on the basis of numbers of enforcement cases. Markets work also forms an important part of the concurrency arrangements and both the CMA and regulators have carried out significant markets work during this reporting period. The CMA concluded its market investigation into investment consultants (which the FCA referred to the CMA following the FCA's asset management market study) and its market study into heat networks. Both projects resulted in a comprehensive set of outcomes to improve competition and protect consumers. The ORR published its final report on its market study into automatic ticket gates and ticket vending machines, while many of the other sector regulators have carried out a wide range of market reviews under their sector-specific powers, such as the PSR's review of card acquiring services and Ofwat's review of the business retail water market.
12. Finally, no assessment of the concurrency regime is complete without an understanding of the wider work carried out by the CMA and the sector regulators to promote competition in their sectors as well as of the extensive and deep cooperation involved. This work has covered a wide range of issues, such as supporting new and innovative entry by using regulatory sandboxes (the FCA and Ofgem) and reviewing the open access regime in rail to ensure a fair playing field for 'open access operators' to compete with established franchise holders (ORR).
13. Reflecting the step-change seen in the last report, the CMA and the regulators continue to regularly work together, not just in relation to their concurrent powers but also in relation to all the competition and

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<sup>7</sup> The two infringement decisions were [Ophthalmology](#), August 2015; and [East Midlands Airport](#), December 2016.

regulatory tools available to promote and protect competition in the regulated sectors.

14. A good example of this is the response published by the CMA in December 2018 to the loyalty penalty super-complaint made by Citizens Advice.<sup>8</sup> While not carried out under the concurrency regime, the CMA and relevant sector regulators, the FCA, Ofcom and Ofgem, worked closely together on this project. The regulators contributed with secondments and input to provide market-specific expertise, and they participated in regular meetings to ensure that the CMA was fully sighted on work being carried out by those regulators relevant to addressing the issues raised by the super-complaint. The FCA and the CMA have also worked closely together on implementing Open Banking, which resulted from the retail banking market investigation, and the FCA, Ofgem, Ofcom and Ofwat have contributed to the CMA's work on vulnerable consumers.
15. Similarly, the CMA and the sector regulators have worked closely together on mergers. The regulators have provided the CMA with technical expertise and advice on mergers involving companies in the sectors they regulate. Two particularly good examples of this during the period were:
  - (a) the close and effective cooperation between the CMA and ORR in relation to the UK specific concerns over the proposed Siemens/Alstom merger reviewed by the European Commission, which included a joint submission and a number of further submissions by the ORR to the European Commission; and
  - (b) the support that Ofgem provided to the CMA in relation to the SSE/npower merger, which included extensive advice and assistance to the CMA case teams at both phase 1 and phase 2 investigations.
16. Overall, the CMA considers that the concurrency regime has continued to operate effectively. Consistent with both the concurrency

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<sup>8</sup> [Tackling the loyalty penalty: response to the super-complaint made by Citizens Advice on 28 September 2018](#), December 2018.

arrangements and the strategic steer issued to the CMA by government,<sup>9</sup> the CMA and sector regulators have worked together cooperatively, harnessing their complementary skills in a way that has enabled increased collaboration between the sector regulators in day-to-day working across all areas, not just concurrency.

17. The CMA acknowledges that there has been criticism of the concurrency regime. In particular, while concurrency enables cases to be handled by the authority best placed to carry them out, some commentators have raised concerns that having different organisations carry out investigations increases the potential for introducing inconsistency into how the Competition Act 1998 is enforced and that some regulators lack resources and experience in competition enforcement.
18. However, there are features of the enhanced concurrency arrangements that were introduced in 2014 that are designed to mitigate against this, for example the requirements to share information on cases and drafts of key documents (such as statements of objections, commitments decisions and infringement decisions) between the CMA and the regulators, as well as the provisions for secondments.
19. Furthermore, the CMA has, in accordance with the strategic steer, sought to use its leadership role to try to promote consistency and quality in competition enforcement. The CMA regularly engages with the regulators on their cases to assist with the scoping, planning and conduct of their analysis, including the development of theories of harm. In addition, the CMA has shared insights on procedural questions such as, in this reporting period, the handling of the leniency process,

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<sup>9</sup> In December 2015, the government issued a revised non-binding '[strategic steer](#)' to the CMA setting out the government's view that, in relation to the regulated sectors, the CMA should continue to focus on: "playing a leadership role with regulators that have competition powers, especially those that are new to the concurrency regime. The CMA should encourage those regulators to make greater use of their competition powers and to tackle anti-competitive actions in regulated markets". It also confirmed that the CMA should build: "a strong dialogue with sector regulators using the UK Competition Network to ensure that the overall competition regime is coordinated, and regulatory practices complement each other". During 2018 the government published for consultation a draft new strategic steer which requires the CMA to "lead work with sector regulators to ensure the overall competition regime is co-ordinated and that consumers are protected from illegal and anti-competitive practices" (see Annex A to [Modernising Consumer Markets: Consumer Green Paper](#)). At the time of publication, BEIS have yet to confirm timescales for finalising the strategic steer.



the process for securing competition disqualification orders and the process for assessing the appropriate level of fines.

20. Overall, the CMA considers that concurrency has supported the effective delivery of Competition Act 1998 cases, with several infringement decisions, as well as the launch of new cases. The concurrency arrangements have also facilitated extensive markets work through cooperation and sharing of expertise as well as engagement in non-concurrent work in the regulated sectors that play an important role in promoting competition in those sectors.
21. The relationship between the CMA and the sector regulators afforded by concurrency is all the more important given the growth of new and rapidly-emerging forms of consumer detriment. Caused in part by the increasing digitisation of the economy, these new issues require more rapid, innovative and joined-up intervention from regulators. The CMA's Chairman, Lord Tyrie, has recently written to the BEIS Secretary of State, Greg Clark, setting out a range of proposals for the reform of the UK's competition and consumer protection regime, in particular to make enforcement of the Competition Act 1998 more streamlined and effective.<sup>10</sup> These proposals, if adopted, should also improve the ability of the sector regulators to carry out their competition work, and so increase the effectiveness of competition enforcement in the regulated sectors.

## **Competition enforcement in the regulated sectors**

22. This section sets out the Competition Act 1998 enforcement work carried out in the period. In addition to the various Competition Act 1998 investigations that are being carried out by the CMA and the regulators, this section also covers other softer enforcement tools such as advisory and warning letters that can be effective and have been used by the CMA and the regulators during the period.

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<sup>10</sup> [A letter and summary outlining proposals for reform of the competition and consumer protection regimes from the Chair of the Competition and Markets Authority](#), February 2019.

## Competition prohibitions

**Table 2: Use of powers under the Chapter I and Chapter II prohibitions in the Competition Act 1998 (or relevant EU prohibition) for the year 1 April 2018 to 31 March 2019**

	<i>Total</i>
Number of cases ongoing at start of reporting period	7
Number of new complaints <sup>11</sup>	16
Number of investigations formally launched	5 <sup>12</sup>
Number of those cases in the year to date in which:	
- information gathering powers and powers to enter premises/conduct dawn raids were used	5
- a Statement of Objections was issued	3
Number of those cases in the year to date that resulted in:	
- an infringement decision	3
- the giving of commitments	
- an exemption or clearance decision (or equivalent)	
- case closure without full resolution	
Number of cases that are ongoing	9
Number of cases in the year to date in which the decision was appealed to the CAT	1
Decisions taken to use direct regulatory powers instead of competition prohibition powers where those competition prohibition powers could have been exercised	

23. At the beginning of the reporting period, there were seven ongoing cases across the regulated sectors. All of the sector regulators have now launched a competition case since obtaining their concurrent competition powers, except the NIAUR<sup>13</sup> and NHSI.<sup>14</sup>

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<sup>11</sup> Complaints' under the Chapter I and Chapter II prohibitions in the Competition Act 1998 (or equivalent EU prohibitions) refers to evidenced complaints received by the sector regulators which they regarded as raising competition law issues under those prohibitions and met their guidelines for the submission of formal complaints.

<sup>12</sup> The 5 cases include an investigation opened by the FCA under Chapter I of the Competition Act 1998 and Article 101 of the Treaty on the Functioning of the EU where formal powers have not yet been exercised as at 31 March 2019. Similarly, they include an investigation opened by Ofcom under Chapter I of the Competition Act 1998 and Article 101 of the Treaty on the Functioning of the EU just before the end of the reporting period but where Ofcom has not yet formally launched the investigation as at the date of this report.

<sup>13</sup> NIAUR has not yet led an investigation under its concurrent competition law enforcement powers, but recently played a role in the allocation of a now ongoing Competition Act 1998 investigation over which it had jurisdiction. The investigation was formally allocated to another competition enforcement body in accordance with the allocation protocol set out in the Competition Act (Concurrency) Regulations 2014, but the NIAUR will provide assistance to that other body.

<sup>14</sup> NHSI has not yet run a competition case but it was involved in the CMA's investigation into anti-competitive information exchange and pricing agreements within the private ophthalmology sector, providing two secondees to work on the investigation and assist with technical aspects of the case. The case settled in August

24. Importantly, three of these cases have since resulted in infringement decisions: one in the airport industry, one in postal services<sup>15</sup> and one in financial services, demonstrating how concurrency is improving the delivery of enforcement cases across the regulated sectors.
25. During the period covered by this report, five new investigations have been opened. Ofcom has opened two investigations, one in relation to postal services and one in relation to electronic communications networks. Ofgem has opened an investigation in relation to wholesale energy trading activities. The CMA and the FCA have each opened cases in relation to financial services.
26. All the above cases are described in greater detail in the following paragraphs.

### ***Airport services***

#### *Heathrow Airport Ltd/Arora Group*

27. In December 2017, the CMA launched an investigation into suspected breaches of Chapter I of the Competition Act 1998 in respect of facilities at airports. The CMA investigated Heathrow Airport Ltd's agreement with the Arora Group for the lease of Arora's Sofitel hotel at Terminal 5, which included a clause restricting how parking prices should be set by Arora for non-hotel guests. The CMA investigated whether the pricing restriction prevented the Arora Group from charging non-hotel guests cheaper prices than those offered at other car parks at the airport.
28. The CMA issued a Statement of Objections in September 2018 and subsequently issued an infringement decision in October 2018, after Heathrow Airport Limited and Heathrow T5 Limited (and its parent Arora Holdings Limited) admitted infringing competition law. The CMA found that the agreement had as its object the prevention, restriction or

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2015 and the infringing company was fined £382,500.

<sup>15</sup> The infringement decision in relation to postal services has since been appealed to the Competition Appeal Tribunal. See further paragraph 4247 below.

distortion of competition and may have affected trade within the UK or a part of it.<sup>16</sup>

29. Both parties have since removed the pricing restriction and Heathrow was fined £1.6m. The Arora Group was not fined, as it was granted immunity for coming forward under the CMA's leniency programme.<sup>17</sup>

## **Energy**

### *Chapter I investigation into Economy Energy/ E (Gas and Electricity/Dyball Associates*

30. Ofgem continued its investigation, opened in September 2016, into a suspected anti-competitive agreement between Economy Energy, E (Gas and Electricity) and Dyball Associates. Ofgem issued a Statement of Objections in May 2018 to the three parties setting out its findings. Ofgem has not yet made a final decision in this case.<sup>18</sup>

### *Chapter II investigation into an undertaking providing services to the energy industry*

31. In August 2017, Ofgem launched an investigation under Chapter II of the Competition Act 1998 and Article 102 of the Treaty on the Functioning of the EU into a potential infringement by an undertaking providing services to the energy industry.<sup>19</sup> The identity of the party remains confidential at this stage of the investigation. During the past year the team gathered data from various parties under Section 26 of the Competition Act 1998 and is now in the process of analysing the evidence. The case team is supported by CMA staff providing expertise in competition economics.

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<sup>16</sup> [Case 50523, Decision of the CMA, Conduct in the transport sector \(facilities at airports\)](#), October 2018.

<sup>17</sup> For further information on leniency, see [OFT1495, Guidance on 'Leniency and no-action applications in cartel cases'](#), July 2013.

<sup>18</sup> Ofgem, [Investigation into Economy Energy, E \(Gas and Electricity\) and Dyball Associates](#).

<sup>19</sup> Ofgem, [Investigation into a potential abuse of a dominant position by a company providing services to the energy industry](#).

## *Chapter II investigation relating to wholesale trading activities*

32. In December 2018, Ofgem launched an investigation into a potential infringement of Chapter II of the Competition Act 1998 and Article 102 of the Treaty on the Functioning of the EU concerning a potential abuse of a dominant position in relation to wholesale trading activities.<sup>20</sup>

## **Financial services**

33. Both the FCA and the CMA have undertaken investigations in the financial services sector. The FCA's two investigations are set out below followed by the CMA's two investigations.

### *Chapter I/Article 101 investigation into Hargreave Hale Ltd/Newton Investment Management Limited/River and Mercantile Asset Management LLP/Artemis Investment Management LLP*

34. In February 2019, the FCA issued its decision that three asset management firms had infringed the Chapter I prohibition and Article 101 of the Treaty on the Functioning of the EU. This concluded an investigation opened in March 2016<sup>21</sup> and is the FCA's first formal infringement decision under its competition enforcement powers.
35. The infringements involved sharing strategic information, on a bilateral basis, between competing asset management firms during one initial public offering (IPO) and one placing, shortly before the share prices were set. The firms disclosed and/or accepted otherwise confidential bidding intentions in the form of the price they were willing to pay and sometimes the volume they wanted to acquire. This allowed one firm to know another's plans during the IPO or placing process when they should have been competing for shares.
36. The FCA fined Hargreave Hale Ltd £306,300 and River and Mercantile Management LLP £108,600. The FCA did not impose a fine on Newton Investment Management Limited because it was given immunity under the competition leniency programme.

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<sup>20</sup> [Ofgem, Investigation under Chapter II of the Competition Act and/or Article 102 of the Treaty on the Functioning of the European Union.](#)

<sup>21</sup> [FCA issues its first decision under competition law](#), February 2019.

37. The FCA also decided that there are no grounds for action for conduct between Artemis Investment Management LLP and Newton Investment Management Limited that took place between April and May 2014 in relation to an IPO.

*Chapter I/Article 101 investigation into financial services*

38. In March 2019, the FCA opened an investigation into suspected anti-competitive arrangements in the financial services sector under Chapter I of the Competition Act 1998 and Article 101 of the Treaty on the Functioning of the EU.

*Chapter I/Article 101 investigation into BISL Ltd*

39. In September 2017, the CMA launched a case into suspected breaches of the Chapter I prohibition and Article 101 of the Treaty on the Functioning of the EU in the use of certain retail most favoured nation clauses following from its market study into digital comparison tools. This investigation concerns the use since 2012 of certain agreements between BISL Ltd (trading as comparethemarket.com or comparethemeerkat.com) and home insurance providers which contain retail most favoured nation clauses.<sup>22</sup> The CMA issued the Statement of Objections in November 2018. The company had until late February 2019 to respond in detail and the CMA will consider the response and any further evidence before reaching a final decision.

*Chapter I/Article 101 investigation into financial services*

40. In November 2018, the CMA launched an investigation into suspected anti-competitive arrangements in the financial services sector under Chapter I of the Competition Act 1998 and Article 101 of the Treaty on the Functioning of the EU with an inspection under Section 27 of the Competition Act 1998.

**Payment systems**

41. The PSR launched its first Competition Act 1998 investigation relating to the market for payment systems in the previous reporting period.

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<sup>22</sup> Most favoured nation clauses in agreements between BISL Ltd and insurance providers would require the providers not to offer better terms and conditions than those they make available through BISL Ltd.

During the current reporting period, the PSR has used its formal information gathering powers to continue gathering evidence as part of its investigation. The investigation will continue to be an important part of the PSR's antitrust work in 2019/2020.

## **Communications**

### *Chapter II investigation into Royal Mail*

42. In August 2018, Ofcom published its decision that Royal Mail had infringed the Chapter II prohibition of the Competition Act 1998 and Article 102 of the Treaty on the Functioning of the EU, concluding an investigation opened in April 2014. The Infringement Decision set out that Royal Mail had abused its dominant position in the market for bulk mail delivery services in the UK by introducing discriminatory pricing whereby lower prices for wholesale bulk access were not available to access operators that operated their own delivery services. Accordingly, such competitors to Royal Mail in delivery would have had to pay higher prices compared to access operators who did not compete with Royal Mail in this portion of the value chain.
43. Ofcom found that Royal Mail did not have a legitimate justification for discriminating against access operators who competed with it in delivery, and that internal documents indicated that this was a deliberate strategy to limit delivery competition from its first and only significant competitor, Whistl. Based on an analysis of profitability, prices and costs, Ofcom concluded that the price differential would have had a material impact on the profitability of an end-to-end entrant, both in absolute terms and also relative to its profits, making entry and expansion in bulk mail delivery more difficult. This effect was particularly evident in the case of Whistl.
44. By introducing the price differential, Royal Mail used its position as an unavoidable trading partner for access operators effectively to penalise those of its access customers who also sought to compete with it by undertaking end-to-end delivery activities. Ofcom found that Royal Mail committed the infringement at least negligently and decided to impose a financial penalty of £50 million. The level of the penalty reflected the seriousness of the infringement, the need to ensure Royal Mail, and other undertakings, are deterred from engaging in this kind of abusive conduct, and the need for a penalty to be proportionate.

### *Chapter I/Article 101 investigation into the business parcel delivery sector*

45. In August 2018, Ofcom launched an investigation under Chapter I of the Competition Act 1998 and/or Article 101 of the Treaty on the Functioning of the EU into suspected market sharing and/or customer allocation arrangements between operators in the business parcel delivery sector in the UK. Ofcom has gathered information using its powers under section 26 of the Competition Act 1998 and is analysing the evidence and forming a view on how to proceed with the investigation.<sup>23</sup>

### *Chapter I/Article 101 investigation into the communications sector*

46. In March 2019, Ofcom opened an investigation into suspected anti-competitive arrangements in the communications sector under Chapter I of the Competition Act 1998 and/or Article 101 of the Treaty on the Functioning of the EU.

## **Cases appealed to the Competition Appeal Tribunal**

47. In October 2018, Royal Mail appealed Ofcom's decision to the Competition Appeal Tribunal. The grounds of its appeal relate to a number of substantive aspects of the Decision as well as the imposition and level of the financial penalty. A full summary of the grounds of Royal Mail's appeal is available at the Competition Appeal Tribunal's website.<sup>24</sup>

## **Use of advisory/warning letters**

48. The CMA and regulators have issued a number of warning and advisory letters over the past year which are designed to promote a competitive outcome for consumers. These softer enforcement tools can, in appropriate circumstances, be effective and efficient ways to address a potential competition concern. Warning and advisory letters can have particular impact where a market is newly open to competition, or where there is limited familiarity with competition

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<sup>23</sup> [CW/01222/07/18, Competition Act investigation regarding business parcel delivery services](#). Case opened August 2018.

<sup>24</sup> [Competition Appeal Tribunal, Case No: 1299/1/3/18](#).



principles, as they can improve compliance and increase awareness more speedily than can be achieved via competition enforcement.

### **CMA**

49. The CMA has issued nine warning letters in the regulated sectors as part of the CMA's investigation into suspected breaches of competition law in respect of airport facilities. They have been issued to airports and hotel operators where there are, or were, reasonable grounds to suspect they may be party to agreements containing price restrictions.

### **CAA**

50. The CAA issued an open letter to airport operators and their relevant business partners following the CMA's investigation into suspected breaches of competition law in relation to facilities at airports.<sup>25</sup> It notified UK airport operators and some of their relevant businesses about the publication of this open letter. It also held compliance meetings with airport operators on the back of this.

### **FCA**

51. The FCA has issued 11 advisory letters over the past year, which aim to increase firms' awareness of competition law and achieve greater compliance.<sup>26</sup> The advisory letters relate to certain contractual restrictions and/or commercial arrangements that potentially might amount to anti-competitive agreements or an abuse of dominance.

### **Ofwat**

52. In October 2018, Ofwat wrote to wholesalers and retailers in the business retail market making recommendations, primarily directed at wholesalers, to improve the transparency around meter reading

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<sup>25</sup> CAA, [Open letter to airport operators and their relevant business partners following CMA's airport car parking investigation](#), August 2018.

<sup>26</sup> See paragraphs 3.11-3.12 of FG15/8, [The FCA's concurrent competition enforcement powers for the provision of financial services](#).

services in order to reassure and help retailers and reduce the risk of any anti-competitive behaviour taking place in the future. Ofwat will monitor the wholesalers' progress against these recommendations.<sup>27</sup>

53. In September 2018, Ofwat sent an advisory letter to wholesalers and their associated retailers<sup>28</sup> in the business retail water market regarding credit arrangements in the business retail water market. Ofwat's letter highlighted companies' obligations under the Competition Act 1998 and sought assurances that the costs of credit provided by wholesalers are reflective of a genuine market rate and comply with competition law.<sup>29</sup>

### **ORR**

54. ORR has issued four warning letters in the rail sector which are intended to raise awareness of competition law and ensure compliance. For example, one of these warning letters related to the freight market, specifically the issue of access to depot facilities and potential leveraging of market power as between transport and depot access markets. The warning letter advised the relevant company to cease its conduct. As a result, the relevant company changed its conduct to address ORR's concerns. ORR continues to work with the company concerned to ensure future compliance.

### **Decisions taken since April 2018 to use direct regulatory powers instead of competition prohibition powers**

55. Under Schedule 4 of the Enterprise and Regulatory Reform Act 2013, the CMA reports on any decision taken by a regulator, in which the regulator is satisfied that its functions under Part 1 of the Competition Act 1998 in a case are exercisable, but that it is more appropriate for it to proceed by exercising functions other than those that it has under Part 1 of the Competition Act 1998. Since April 2018, there has been no occasion when any of the sectoral regulators have been satisfied that

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<sup>27</sup> Ofwat, [Letter to wholesalers and retailers about meter reading in the retail market](#), October 2018.

<sup>28</sup> In this context, 'associated retailers' means retailers who are within the same business group as a (previously vertically integrated) regulated water company.

<sup>29</sup> See Ofwat, [Letter from Emma Kelso to Wholesalers and associated retailers](#), January 2019.

their functions under Part 1 of the Competition Act 1998 are exercisable but have nevertheless decided that it is more appropriate for them to proceed by exercising functions other than their Part 1 functions.

56. The sectoral regulators also have a duty to consider whether, before exercising certain specified powers under their respective sector-specific legislation, it would be more appropriate to proceed under the Competition Act 1998.<sup>30</sup>
57. During the period of this report, there was one occasion when Ofwat exercised its sectoral enforcement powers under the Water Industry Act 1991,<sup>31</sup> where it had a duty to consider whether it would be more appropriate to proceed under competition powers. This related to a decision to take enforcement action under section 18 of the Water Industry Act 1991 against Thames Water. Ofwat decided it was not appropriate to proceed under the Competition Act 1998 as the issues concerned Thames Water's management of its statutory obligations (regarding leakage reduction) rather than market related issues.
58. The PSR indicated that during the period of this report, there was one occasion where it exercised certain specified powers under the Financial Services (Banking Reform) Act 2013 (FSBRA)<sup>32</sup> giving rise to the duty to consider whether it would be more appropriate to proceed under the Competition Act 1998. In October 2018, the PSR gave a specific direction in accordance with sections 54(2)(a) and 54(3)(c) FSBRA to LINK Scheme Holdings Ltd (LINK), the operator of the LINK ATM system, requiring it to make sure it does all it can to fulfil the public commitments it made at the beginning of 2018 regarding the ongoing availability of access to free-to-use ATMs for UK consumers. Before exercising its powers, the PSR considered whether it would be more appropriate to proceed under the Competition Act 1998 and concluded that it was more appropriate to proceed under its regulatory powers to ensure LINK does all that it can to deliver on its public commitments.

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<sup>30</sup> This legislative obligation does not apply to NHSI (as Monitor).

<sup>31</sup> Under sections 19 and 22A of the Water Industry Act 1991.

<sup>32</sup> Under section 62 of FSBRA.

59. There were three occasions when ORR exercised its sectoral enforcement powers under the Railways Act 1993,<sup>33</sup> where it had a duty to consider whether it would be more appropriate to proceed under the Competition Act 1998. In each of those cases, when exercising its enforcement powers, it considered it was not appropriate to proceed under the Competition Act 1998 as all three instances did not raise competition concerns. These were in relation to:
- (a) two breaches of the licence by Network Rail. In both instances, ORR imposed an enforcement order; and
  - (b) one breach of the Statement of National Regulatory Provisions by a Train Operating Company (GTR). ORR issued a notice proposing a penalty on GTR on 14 March 2019.
60. Since April 2018, the NIAUR has instigated three processes (involving direct regulatory action) against regulated companies where it had a duty to consider whether it would be more appropriate to proceed under the Competition Act 1998.<sup>34</sup> Each of the formal processes resulted from information suggesting a potential licence breach had occurred. Further, the enforcement investigations initiated by the NIAUR did not give any indication that a breach of competition law had occurred. Proceeding under sectoral powers was, therefore, the most appropriate means by which to address the concerns identified and ensure consumer interests were protected.
61. Ofgem has a duty<sup>35</sup> to consider, before issuing a final order, confirming a provisional order, or imposing a penalty in relation to a licence condition, in the gas and electricity sectors, whether it would be more appropriate to proceed under competition powers. Ofgem dealt with a number of such issues during the course of the relevant reporting period, including a couple of cases which raised potential competition concerns. However, in both such cases, on further analysis, Ofgem

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<sup>33</sup> Under sections 55 and 57A of the Railways Act 1993. The primacy obligation requires ORR to consider whether it would be more appropriate to proceed under Competition Act 1998 before deciding to make a final order or confirming a provisional order for the purpose of securing compliance with a licence condition or requirement. It also requires ORR to consider whether it would be more appropriate to proceed under Competition Act 1998 before imposing a penalty for a contravention of a licence condition or requirement or an order.

<sup>34</sup> Under Articles 42 and 45 of the Energy (Northern Ireland) Order 2003 and Articles 31 and 35 of the Water and Sewerage Services (Northern Ireland) Order 2006.

<sup>35</sup> Under sections 28 and 30A of the Gas Act 1986 and sections 25 and 27A of the Electricity Act 1989.

took the view that the concerns were not substantiated and decided not to pursue them under either competition or sectoral powers.

62. There were no cases for either Ofcom or the FCA in which, when exercising their sector-specific regulatory powers, competition concerns arose such that they needed to consider whether it was more appropriate to proceed by using their competition powers under the Competition Act 1998.
63. The CAA indicated that it did not exercise the specified provisions giving rise to the duty to consider whether it would be more appropriate to proceed under the Competition Act 1998 during the course of the relevant reporting period.

## **Market investigations and market studies**

64. As well as the power to conduct antitrust investigations, the sector regulators, along with the CMA, have powers to conduct market studies under the Enterprise Act 2002, and to make market investigation references to the CMA.
65. Detail about this work is set out below. In addition, this report also outlines market studies and reviews carried out by the regulators under their sectoral powers as well as other markets work including the loyalty penalty super-complaint and work in relation to non-concurrent regulated sectors, specifically the CMA's market study into audit services.

## **Market investigations**

### ***Investment consultants***

66. The CMA's final report into the supply and acquisition of investment consultancy services and fiduciary management services to and by institutional investors and employers in the UK was published in December 2018. The market investigation was launched in 2017 following a reference from the FCA. The FCA has provided the CMA with sector-specific expertise during the CMA's investigation and remedy design and implementation.
67. Investment consultancy and fiduciary management provide important services for pension scheme trustees, helping them to manage over £1.6 trillion of investments on behalf of scheme members. How well

these services work has a major effect on pension scheme outcomes, affecting up to half of all UK households.

68. The CMA found low levels of customer engagement, and difficulties for consumers to access and assess the information necessary to understand whether to switch providers. Firms which provide both investment consultancy and fiduciary management have an incumbency advantage deriving from low customer engagement; the ability of investment consultants to steer their advisory customers towards their own fiduciary management services; a lack of historical performance and fee information to help customers assess whether a better deal on fiduciary management is available elsewhere and high switching costs. These features reduce consumers' ability to drive competition between fiduciary managers and reduce providers' incentives to compete. In turn, this may be expected to result in substantial customer detriment in the market.
69. To address these issues, the CMA introduced the following remedies:
- (a) Mandatory tendering when pension trustees first purchase fiduciary management services and a requirement to run a competitive tender within five years if a fiduciary management mandate was awarded without one.
  - (b) A requirement on investment consultants to separate marketing of their fiduciary management service from their investment advice and to inform customers of their duty to tender in most cases before buying fiduciary management.
  - (c) Greater support from the Pensions Regulator for pension trustees when running tenders for investment consultancy and fiduciary management services and guidance for pension trustees to support our other remedies.
  - (d) Requirements on fiduciary management firms to provide better and more comparable information on fees and performance for prospective customers and on fees for existing customers.
  - (e) A requirement for pension trustees to set objectives for their investment consultant in order to assess the quality of investment advice they receive.
  - (f) A requirement on investment consultancy and fiduciary management providers to report performance of any

recommended asset management products or funds using basic minimum standards.

- (g) Recommendations to government to enable the Pensions Regulator to oversee the CMA's remedies on pension scheme trustees and to extend the FCA's regulatory perimeter to include all of the main activities of investment consultants.
70. Throughout the market investigation, the FCA provided assistance to the CMA, including:
- (a) The CMA was able to use substantial pieces of evidence gathered by the FCA for its market study through the Gateway Regulations,<sup>36</sup> which allow the FCA to disclose confidential information to third parties in certain circumstances, avoiding duplicating effort in data gathering and analysis.
  - (b) The CMA had a series of discussions with the FCA over proposed remedies, the FCA's ability to monitor these and how they fit with existing FCA regulation (such as the broad MiFID II directive<sup>37</sup>). This fed into the CMA's initial design of these proposed remedies, and following the provisional decision, the CMA and FCA continued working together on the design of remedies and their implementation.

### ***Energy market investigation***

71. The CMA's energy market investigation, which followed Ofgem's referral and concluded in June 2016, resulted in a package of 26 remedy recommendations to Ofgem. These remedies were aimed at making competition in the market more effective and are expected to have market-wide implications and to enhance competition. Most significantly, the remedies aim to increase consumer activity and

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<sup>36</sup> The Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001.

<sup>37</sup> MiFID II (2014/65/EU) is a revised version of the Markets In Financial Instruments Directive, or MiFID I (MiFID - 600/2014/EU). It is intended to improve protections for investors and imposes more reporting requirements and tests in order to increase transparency and reduce the use of dark pools and OTC trading.

engagement, and therefore put additional pressure on energy retailers to compete vigorously for customers.

### *Remedy implementation*

72. In August 2016, Ofgem set out its high-level approach to implementing those remedies in its Implementation Strategy<sup>38</sup> and followed this up with detailed milestones in its Implementation Plan in November 2016.<sup>39</sup> Approximately 80% of the recommendations had been fully implemented by mid-2018. An outline of the work done during the period of this report on the remaining recommendations is set out below.
73. During the period of this report, Ofgem:
- (a) Initiated the first trials under the new supply licence condition (SLC) 32A which requires suppliers to participate in trials which aim to test measures or behaviours which may impact on consumer engagement. Positive results from such trials can be seen from the 'Active Choice Collective Switch Trial',<sup>40</sup> which ran between February and April 2018 and examined the impact of a series of letters offering around 50,000 disengaged energy customers (from one of the six largest energy suppliers who had been on a standard variable tariff for three years or more) an exclusive tariff negotiated by a third-party consumer partner. Over 22% of customers in the trial switched overall, more than 8 times higher than the control group, and customers who switched to a new tariff averaged savings of £299. Following the promising results of the first trial, Ofgem commissioned two further collective switch trials and expects to publish results in summer 2019. For the first of these two trials, Ofgem issued a Direction to npower under SLC 32A for npower to participate. Following npower's initial refusal to comply, Ofgem issued a Provisional Order in September 2018 compelling npower to act.

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<sup>38</sup> Ofgem, [Skeleton open letter on implementation strategy](#), August 2018.

<sup>39</sup> Ofgem, [Detailed Implementation Plan](#), November 2016.

<sup>40</sup> Ofgem, [Active Choice Collective Switch Trial: Final results](#), December 2018.



When npower again refused to comply, Ofgem secured an injunction from the High Court.<sup>41</sup> As a result, npower complied with the Direction and the trial was able to proceed.<sup>42</sup>

- (b) Decided on the partial removal of the Whole-of-Market requirement for Confidence Code accredited price comparison websites, as well as consulting on new Code requirements.
- (c) Published its 2018 State of the Market report,<sup>43</sup> giving an assessment of how well energy markets are working for consumers in achieving five key consumer outcomes.
- (d) Published its outline business case for market-wide half hourly settlement<sup>44</sup> in August 2018, which indicated substantial potential benefits, including exposing suppliers to the true cost of their customers' usage, incentivising suppliers to take steps to move consumption to cheaper periods of generation, lower customer bills, reduced carbon emissions, enhanced security of supply, and lowering barriers to entry and enabling new business models. Ofgem is now working towards an impact assessment that will inform the full business case and final decision on market-wide half hourly settlement.

- 74. Two remaining parts of the CMA's remedies also came into force during the course of this year, relating to the losses of electricity during its transmission and smart meters.<sup>45</sup>
- 75. The CMA issued directions to one supplier, Daligas, to ensure it complied with the Energy Market Investigation (Microbusinesses) Order 2016.

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<sup>41</sup> Ofgem, [Enforcement action against npower](#), September 2018.

<sup>42</sup> npower also made an unsuccessful attempt to challenge the direction and the provisional order by way of judicial review. The CMA was an intervener in these judicial review proceedings.

<sup>43</sup> Ofgem, [State of the energy market 2018](#), October 2018.

<sup>44</sup> Ofgem, [Market-wide Settlement Reform: Outline Business Case](#), August 2018.

<sup>45</sup> Articles 3, 4 and 7 of [The Energy Market Investigation \(Electricity Transmission Losses\)](#).

[Order 2016](#) came into force on 1 April 2018, and Article 3.3 of the [Energy Market Investigation \(Gas Settlement\) Order 2016](#), which came into force on 1 April 2018.

*CMA review of the Energy Market Investigation (Prepayment Charge Restriction) Order 2016*

76. The CMA has also launched a review of the Energy Market Investigation (Prepayment Charge Restriction) Order 2016 in January 2019 to consider the impact of:
- (a) the extent to which the rollout of smart meter was ahead or behind the government's target set in the Energy market investigation; and/or
  - (b) the introduction of the Domestic Gas and Electricity (Tariff Cap) Act 2018, introducing a charge restriction for consumers on default tariffs, taking into consideration the risk of unintended consequences on competition, consumers and the smart meter rollout arising from the coexistence in the retail energy markets of two charge restrictions with differing methodologies and underlying data.
77. An issues statement was published in February 2019, consulting on whether either, or both, of these two factors constitute a change in circumstance such that the Order is no longer appropriate and needs to be either varied or revoked.<sup>46</sup>

*Implementation of the Price Cap*

78. As required by the Domestic Gas and Electricity (Tariff Cap) Act 2018, Ofgem introduced the default tariff cap on 1 January 2019. This price cap is intended to remain in place until 2020, and the Secretary of State must decide each year whether to maintain the cap (following a recommendation from Ofgem) until 2023.
79. Ofgem designed the cap to prevent unjustified price increases and ensure default tariffs reflect more closely the underlying costs of supplying energy. Price increases will be justified by underlying costs, and the cap will reduce when underlying costs fall. In the first cap

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<sup>46</sup> For further details, please see the [Review of the Energy Market Investigation \(Prepayment Charge Restriction\) Order 2016](#) case page.

period (1 January to 31 March 2019), Ofgem set the cap level at £1,137 for a typical default tariff customer – a dual fuel single rate customer paying by direct debit using a typical amount of energy in annualised terms.<sup>47</sup> For a similar customer paying by standard credit, the cap will be £1,221, to reflect the higher costs of serving these consumers. Ofgem will determine every six months the updated Benchmark Maximum Charges that will apply for the following Charge Restriction Period. Ofgem announced in February 2019 an increase to the cap from 1 April 2019 to reflect higher wholesale energy costs.<sup>48</sup>

80. Ofgem estimates that the cap will save 11 million default tariff customers<sup>49</sup> in total about £1 billion each year, depending on individual customer's circumstances. For a customer in 'typical' circumstances (with a dual fuel standard variable tariff (SVT) with typical consumption), the first cap level was £76 less than the current average SVT price (in annualised terms).

### ***Retail banking market investigation***

81. The CMA's market investigation into the supply of retail banking services to personal current account customers (PCAs) and to small and medium-sized enterprises<sup>50</sup> (SMEs) in the UK<sup>51</sup> concluded in August 2016. The CMA imposed a package of measures designed to address the adverse effects on competition that were identified, to ensure banks work harder for customers and to ensure that the benefits of new technology are fully exploited.
82. The CMA accepted undertakings in January 2017 from Bacs (now part of Pay.UK) and in February 2017 published the Retail Banking Market Investigation Order, which together set out the requirements on banks

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<sup>47</sup> Ofgem stated the cap level in annualised terms, using Typical Domestic Consumption Values (TDCV) and national average network charges. TDCV represents the median level of consumption for domestic energy consumers. The TDCV for single rate electricity is 3,100 kWh per year. The TDCV for gas is 12,000 kWh per year.

<sup>48</sup> Ofgem, [Higher wholesale costs push up default and pre-payment price caps from April](#), February 2019.

<sup>49</sup> The cap applies to all customers with a default tariff. Ofgem can exempt customers or tariffs in certain situations. Suppliers can request a derogation for SVTs that support the production of gas, or the generation of electricity, from renewable sources.

<sup>50</sup> An SME was defined as a business that, in respect of a given financial year applying to it, has annual sales revenues (exclusive of VAT and other turnover-related taxes) not exceeding £25 million.

<sup>51</sup> In relation to personal customers, the terms of reference included only the supply of PCAs, which includes overdrafts. In relation to SMEs, the terms of reference were broader; they included business current accounts and lending products, but they excluded insurance, merchant acquiring, hedging and foreign exchange.

and Bacs to implement the remedies set out in the market investigation final report. The other elements of the CMA's remedies package were put in place through recommendations made to the FCA, HMT and BEIS. Almost all elements of the CMA's remedies package are now in place:

- (a) Open Banking, which provides greater ability for consumers and businesses to compare banking options and enable the delivery of innovative new services, launched in January 2018. The CMA issued Directions to six of the providers obliged to deliver Open Banking to ensure that they fully complied with their obligations. Further, in July 2018 the CMA notified changes to the timetable and project plan for the delivery of future phases of Open Banking.
- (b) Overdraft remedies came into effect in August 2017 (banks introduced a maximum monthly charge for unarranged overdraft fees) and February 2018 (banks started to provide customers with text alerts when they start, or are about to start, using an unarranged overdraft facility). Throughout 2018 the CMA has monitored the implementation of these remedies. Many of the banks subject to these measures experienced difficulties fully complying with the alerts remedy, for example with there being days when alerts were sent after the required time, or not at all. The CMA has worked with the banks, to fully understand the underlying causes of each of these breaches, to minimise the risk of repeat occurrences and to ensure that customers who were charged or incurred a fee related to their unarranged overdraft when they did not receive an alert were reimbursed. To date banks have reimbursed customers over £1.6 million as a result of the CMA's compliance monitoring activities.
- (c) Core service quality indicator information was published for the first time in August 2018. This provides consumers and SMEs the opportunity for the first time to compare the service quality provided by banks on a variety of core service quality metrics. These core metrics were supplemented by additional service quality metrics introduced by the FCA, following the CMA recommendations to it. The information is published every six months, and the latest set was published in February 2019.
- (d) SMEs will benefit from the development of innovative fintech products after the conclusion in December 2018 of the new second stage of the Nesta Open Up Challenge. The Challenge

awarded a total of £4.5 million to six winners.<sup>52</sup> The products are enabled by Open Banking and include tools that will enable SME's to more easily compare business current accounts, unsecured loans and unsecured overdrafts. SMEs also continue to benefit from measures to increase loan and overdraft price transparency and loan price and eligibility tools<sup>53</sup> which came into effect in August 2017 and February 2018 respectively.

- (e) Pay.UK continues to make good progress implementing the requirement in its undertakings to improve current account switching, including focusing on how the Current Account Switching Service (CASS) can be developed to benefit SMEs. The PSR continues to monitor the performance of CASS against the Key Performance Indicators that Bacs agreed with HMT.

- 83. The implementation of Open Banking is progressing, with further enhancements to the regulatory standards being introduced from March 2019 to September 2019. The CMA and the FCA continue to work closely with other key authorities to ensure that the development and implementation of Open Banking aligns with the revised Payment Services Directive (PSD2).<sup>54</sup> The FCA issued a policy statement confirming changes to its payment services and electronic money approach document and Handbook. Payment service providers will be required to undertake anti-fraud measures with a customer (unless exempt from this requirement) from 14 September 2019, requiring all payment service providers to ask consumers for more information in order to verify their identify before a payment is made.<sup>55</sup>
- 84. Open Banking, along with PSD2, introduces important changes to the retail banking sector. Open Banking's technology and processes could potentially transform retail banking by allowing new, innovative

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<sup>52</sup> Open Banking, [Open Up Challenge Announces Winners](#), December 2018.

<sup>53</sup> These tools provide SMEs with an indicative price quote and indication of their eligibility for the lending product they are enquiring about.

<sup>54</sup> PSD2 was implemented in the UK from 13 January 2018. PSD2 provides for a number of EU Regulatory Technical Standards and Guidelines developed by the European Banking Authority, which come into effect in 2019.

<sup>55</sup> PS18/24, [Approach to final Regulatory Technical Standards and EBA guidelines under the revised Payment Services Directive \(PSD2\)](#), December 2018.

providers of banking services to enter the market. The CMA and the FCA have worked together, using their complementary resources to ensure the effective implementation of Open Banking.

## **Market studies**

### ***Digital Comparison Tools***

85. In September 2017, the CMA published its final report following a year-long market study into the use of Digital Comparison Tools (DCTs) by consumers to compare and potentially to switch or purchase products or services from a range of businesses. The CMA made a range of recommendations to address concerns:<sup>56</sup>
- (a) To ensure consumers can trust DCTs and make sufficiently well-informed choices between DCTs and between suppliers that are listed on them, the CMA set out principles spelling out that DCTs should treat consumers fairly by being Clear, Accurate, Responsible and Easy to use (the CARE principles).
  - (b) Regulators should have regard to the CARE principles when assessing compliance with the law by DCTs and consider updating voluntary accreditation schemes to remove the most potentially distorting rules – particularly on market coverage requirements.
  - (c) The government should bring intermediaries like DCTs into regulators' scope in the energy and telecoms sectors.
  - (d) Regulators should consider ways to free up more data and make it easier for consumers to use DCTs, as well as working with DCTs and suppliers to improve the effectiveness of quality metrics.
86. In addition, there were some specific recommendations addressed to the FCA, Ofgem and Ofcom.

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<sup>56</sup> As well as remedy recommendations, the CMA also opened a competition law investigation in relation to one DCT's contracts with home insurers, which appeared to limit insurers' ability to charge a lower price on one platform than on another ('wide price parity' / MFN clauses) and may result in higher home insurance prices. See paragraph 39 above.

87. The following paragraphs provide an update on the progress made by the relevant regulators in implementing the CMA's recommendations, as well as the work being undertaken by the UK Regulators Network (UKRN) to support implementation of some of the recommendations that were addressed to all the regulators. The CMA considers that the progress made by the regulators in implementing these recommendations has been mixed, with good progress on some recommendations and with others being taken forward more slowly than hoped.

#### *FCA*

88. The CMA recommended to the FCA that it should:

- (a) consider whether and how it would be possible to make it easier for consumers to get quotes from multiple DCTs, in order to support effective DCT competition;
- (b) build on its existing work to facilitate accurate like-for-like comparison that incorporates non-price factors; and
- (c) consider how insurance providers and DCTs capture consumer preferences on excesses, how this is used in generating a quotation and how it is subsequently presented; and how this may affect consumers' choice of insurance products.

89. The FCA has ongoing responsibilities to regulate DCTs that are authorised by the FCA where they also engage in regulated activities. Since the CMA published its market study the FCA has taken some steps in response to the CMA's recommendations and has engaged with the UKRN. It has:

- (a) developed the FCA's two-year supervisory strategy for the portfolio of DCTs that it supervises. Information provision is a key priority for the year and this will include how excesses are presented;
- (b) made its Supervision teams aware of the CMA's CARE principles to have regard to in their supervisory work with DCTs; and
- (c) included details of the CMA's recommendations in its internal cross-sector report on market developments so teams across the FCA are aware of and considering the recommendations in their work.

90. The FCA has liaised with a small number of DCTs through meetings, workshops and roundtables to better understand their individual strategies and to help identify inherent drivers of potential harm and emerging risks. The FCA has told us that its supervisory strategy will be set around the mitigation of key harms, such as those arising from access to DCTs and from the amount of personal data held by DCTs.
91. Following action by the FCA and the CMA in relation to developing quality metrics, PCA and business current account providers started to publish better information about the services and service standards they offer consumers and small businesses. Although this information is not product specific, it may help consumers, price comparison websites and the media to make meaningful comparisons of the services different current account providers offer.<sup>57</sup>
92. The FCA has continued its engagement with the UKRN to ensure that it takes a consistent approach to DCTs where appropriate. For example, the FCA shared with the UKRN its work on developing quality metrics for PCAs and data portability standards in banking.
93. The FCA has an ongoing commitment to encourage innovation in the interest of consumers. As part of this, the FCA has continued to offer support and advice to firms, including DCTs, if they have genuinely ground-breaking or innovative offerings that are likely to offer a good prospect of identifiable consumer benefits.

#### *Ofcom*

94. In the CMA's report, it noted its strong support for Ofcom's existing initiative to make more data available for use by third parties like DCTs, including using its Digital Economy Act powers. The CMA also recommended that Ofcom should:
  - a. make improvements to its voluntary accreditation scheme for price comparison websites (PCWs) in the telecoms sector, and in particular removing the most distorting requirements such as on coverage – and in general paring back the more prescriptive requirements; and
  - b. consider how else it might support the further development of DCTs in telecoms as a way of enabling better competition and consumer choice.

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<sup>57</sup> See FCA, [Better information on current account services](#), August 2018.



95. The CMA welcomes the steps that Ofcom has taken to improve the availability of information on broadband and mobile services for use by DCTs and supports the continuing steps to provide this information for individual properties.
96. Ofcom intends to conduct a review of its price comparison website (PCW) accreditation scheme in light of relevant European legislation (the European Electronic Communications Code) which was ratified in December 2018, and which sets out requirements relating to the certification of independent comparison tools by national regulatory authorities.<sup>58</sup> In particular, this legislation requires Ofcom to ensure consumers have access free of charge to at least one independent comparison tool. It also requires that, subject to meeting certain requirements, these comparison tools may be certified by Ofcom.
97. The CMA notes that Ofcom intends to conduct this review during 2019-20, as set out in its Annual Plan,<sup>59</sup> to ensure its accreditation scheme continues to work for consumers in the current market, and to ensure alignment with the objectives of the Code. Ofcom will also consider the CMA's specific recommendations for the scheme as part of this review.
98. The CMA also recommended that government should extend Ofcom's regulatory scope to directly include DCTs. The CMA is not aware of any progress in implementing this.
99. Ofcom has a programme of work aiming to improve access to data in communications markets. In December 2018, it released address level information on availability of fixed broadband and mobile data through an Application Program Interface (API), and postcode level broadband coverage data in bulk format. In addition to this, Ofcom is working with communication providers and PCWs to determine the best way to release information on the availability of specific broadband retail packages for any given address. As part of its involvement in BEIS' Smart data review, Ofcom is also exploring the potential for other consumer data, for example on usage, to be accessed by third party intermediaries so that truly personalised services can be provided to consumers.

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<sup>58</sup> [Official Journal of the European Union, L 321](#), 17 December 2018.

<sup>59</sup> [Ofcom's Annual Plan: Our programme of work for 2019/20](#), March 2019.

## Ofgem

100. The CMA recommended that Ofgem should:
- (a) make improvements to its voluntary accreditation scheme and in particular remove the most distorting requirements such as on coverage – and in general paring back the more prescriptive requirements; and
  - (b) make comparison more accurate and easier by supporting better access to consumer usage and tariff data, building on its existing work.
101. In July 2018, Ofgem published its decision to remove the Whole of Market requirement, in response to the CMA's recommendation. The changes to the Confidence Code further implemented the CARE principles. In reviewing the Code, Ofgem set out how the different requirements of the Confidence Code reflect the CARE principles.<sup>60</sup>
102. Ofgem's work on future supply market arrangements<sup>61</sup> is looking at whether existing arrangements prevent potential new entrants with disruptive business models from entering the market. This includes considering issues around access to data and the increasing role of intermediaries can play in the market to support consumers.
103. Additionally, through the midata project<sup>62</sup> Ofgem is enabling consumers to share their data between energy suppliers and trusted third parties. The initial iteration of the midata standard will facilitate current energy tariff comparisons, while future iterations are likely to cater for more advanced comparisons, potentially for multi-utility products. A central principle of the midata project is ensuring alignment with other data access initiatives, within Ofgem, the energy sector and in other sectors and parts of government. Proper alignment across sectors should maximise portability and interoperability of data and therefore lower barriers to the introduction of innovative products and services for consumers.

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<sup>60</sup> Ofgem, [Decision on implementing the CMA's recommendation to remove the Whole of Market requirement](#), July 2018. The assessment against the CARE principles are included in Appendix 2 of the decision document.

<sup>61</sup> Ofgem, [Future supply market arrangements – response to our call for evidence](#), July 2018.

<sup>62</sup> Ofgem, [Midata in energy project](#).

104. The Confidence Code allows accredited PCWs to assign suppliers a quality of service rating. It requires that any methodology used to assign the ratings is robust (reflecting the CARE principles) and is refreshed at least every 12 months. PCWs may develop their own methodology, which must be reviewed by Ofgem, or can use ratings adopted by recognised consumer organisations, such as Citizens Advice.
105. The CMA is pleased that Ofgem has amended its Confidence Code to remove whole of market requirements and recognises the steps it has taken to allow third party access to consumer data to help consumers get the most appropriate deal. However, as with Ofcom, little progress has been made by government in extending Ofgem's regulatory scope to directly include DCTs though the CMA note the government's announcement of the Future Energy Market Review.<sup>63</sup>

#### *Ofwat*

106. The CMA did not make direct recommendations to Ofwat and notes that the water retail market remains in a nascent state. However, Ofwat has undertaken some work in this area.
107. The Water Retail Market opened for business customers in April 2017. At present, DCTs have yet to emerge, but Ofwat expects to see them play a significant role in the future. Consequently, Ofwat is looking to ensure that the right factors are in place to realise the benefits of DCTs (access to reliable data on customer usage/current provision, price and tariffs, etc.). In particular:
  - (a) the CARE principles broadly reflect the expectations Ofwat has already set out in the Customer Protection Code of Practice and principles for any [voluntary industry third party intermediary codes of conduct](#) for the business retail market; and
  - (b) the Market operator (MOSL) has committed to address gaps and inaccuracies in the data provided by wholesalers for the central market operating system (including postcodes, location of supply points and customer details, and missing or inaccurate meter and consumption data) and Ofwat is considering further work

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<sup>63</sup> UK Government, [Future Energy Market Review](#), March 2019.

with industry to improve data quality across the market so that third party intermediaries (including DCTs) are given access to accurate information.

## *UKRN*

108. The CMA made recommendations where a number of regulators could work collaboratively, suggesting the UKRN as a potential vehicle for regulators to support this collaboration:
- (a) regulators continue to work together to ensure that they take a consistent approach to DCTs where appropriate (for instance where DCTs offer bundled utilities from different sectors), for example through the UK Regulators Network;
  - (b) sector regulators to look to work with DCTs and suppliers to improve the effectiveness of quality metrics, in order to mitigate against the risk of hollowing out;
  - (c) sector regulators to consider ways to free up more data and make it easier for consumers to use DCTs, in order to support more consumer engagement and better-informed choice; and
  - (d) all regulators to consider whether and how it would be possible to make it easier for consumers to get quotes from multiple DCTs, in order to support effective DCT competition.
109. The UKRN has worked with Ofcom, Ofgem, FCA, CAA and Ofwat to facilitate their collective approach to addressing the general recommendations for sector regulators in the report. The UKRN has also supported those regulators to which specific recommendations were addressed. However, progress has been limited.
110. The UKRN has provided a forum, through regular project group meetings and supporting communication, for those named regulators to share approaches and best practice to support their implementation of the CMA's recommendations. For each of the recommendations, the UKRN has explored each regulator's current approach and existing policies, the similarities with others' approaches/policy, and the scope for approaches to be aligned. The UKRN has facilitated the sharing of best practice and lessons learned via presentations from regulators on current account service quality metrics and on data portability in banking.

111. The UKRN has worked with the regulators on embedding the CARE principles into their approaches to DCTs. However, it is not clear to what extent the regulators are formalising or embedding this into supervision activities.

### ***Heat networks***

112. The CMA's market study into Heat Networks was launched in December 2017. Heat networks are systems that heat multiple homes from a central source. The CMA's market study concluded in July 2018.<sup>64</sup> To address findings that heat network customers lacked the same protections as electricity and gas customers, the CMA recommended that BEIS and the Scottish government set up a new statutory framework to ensure consumer protection for all heat network customers equivalent to gas and electricity customers, covering price, quality of service, transparency and minimum technical standards. This new regulatory framework system should include a regulatory body with statutory powers (which could be Ofgem) which could set and enforce regulation and monitor compliance.
113. The government responded to the market study in December 2018, accepting the CMA's recommendations.<sup>65</sup> The CMA is now working closely with BEIS and Ofgem on design and implementation, and with the Scottish government which is also committed to the sector being regulated.

### ***Ticketing systems***

114. In March 2018, the ORR opened a market study into the supply of automatic ticket gates (ATG) and ticket vending machines (TVM), following the conclusion of a wider review of the markets for ticketing equipment and systems.<sup>66</sup> This is the first market study to have been launched by a sector regulator under the Enterprise Act 2002 since the new market study provisions were introduced under the Enterprise and Regulatory Reform Act 2013.

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<sup>64</sup> CMA, [Market study into domestic Heat Networks](#).

<sup>65</sup> [Heat Networks: Ensuring Sustained Investment and Protecting Consumers](#), December 2018.

<sup>66</sup> As well as automatic ticket gates and ticket vending machines, the market review looked at ticket issuing systems, which covers the software that is the 'brain' of a sales system and which is an essential 'input' to downstream ticket retailing. Each consumer facing sales channel (eg mobile, web, ticket vending machines, on-train) requires a ticketing issuing system.

115. The ORR published its final report in March 2019<sup>67</sup> which set out its findings and recommendations to address key issues. The key findings were:
- (a) the structure and features of the markets for ATGs and TVMs have an impact on purchasers' decision-making and incentives;
  - (b) the level of competition for ATGs is weak, with higher prices than would be expected to prevail under competitive conditions, while innovation occurs only after pressure from purchasers, rather than as a result of competition between suppliers; and
  - (c) competition for TVMs is moderate, and to the extent poor outcomes are observed, ORR takes the view that rivalry is delivering better products and efficiency, albeit slowly. As accreditation processes operate as a clear barrier for restricting innovation and new entry, ORR considered that regulatory intervention should focus on this area.
116. To address the issues identified, ORR set out three recommendations to improve incentives for new businesses (currently active in other jurisdictions) to compete for demand and introduce new technology:
- (a) the Rail Delivery Group (RDG)<sup>68</sup> facilitate a joint government and industry working group to specifically consider issues regarding ATG procurement and the future of revenue protection;
  - (b) Transport for London (TfL), industry and ATG suppliers work together to develop a solution to provide access to the TfL network for third parties; and
  - (c) the RDG continue to deliver on the commitments it made at the end of phase one to address issues with accreditation until at least 30 June 2019, when the RDG is obliged to report to ORR regarding its work and impact on the market. The commitments that the RDG had proposed at the end of phase one were intended to improve its accreditation process and encourage new entry. In particular, these commitments were aimed at making the RDG accreditation processes less complex, more

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<sup>67</sup> ORR, [Market Study into the supply of automatic ticket gates and ticket vending machines](#), March 2019.

<sup>68</sup> The [Rail Delivery Group](#) was established in June 2011 by the major passenger and freight train operator groups and Network Rail to coordinate and lead on cross-industry initiatives.

effective and more efficient for prospective and existing rail retailers, and easier for new entrants to enter the rail retailing market with new technological propositions.

## **Market reviews and other markets work**

117. A number of regulators have used their sectoral powers to carry out market studies and market reviews that have focused on competition issues within their sectors. The CMA has also, following a super-complaint made by Citizens Advice, carried out an investigation into the loyalty penalty faced by consumers.<sup>69</sup> While not strictly a concurrency matter, it covers concurrent sectors and demonstrates the wider benefits of the now embedded concurrency arrangements to promote competitive outcomes. This includes closer mutual working and support between the CMA and the sector regulators, as well as the sharing of information and expertise where common issues arise across different sectors. The CMA has also undertaken work in the non-concurrent regulated sectors, including the statutory audit market, which is reported on below.

## **FCA**

### *General Insurance Pricing Practices market study*

118. In October 2018, the FCA launched a market study looking at the pricing of home and motor insurance.<sup>70</sup> This study was in response to concerns about ‘inertia pricing’ which results in longstanding customers paying significantly more than new customers with equivalent risk. The market study is looking at three key areas:

- (a) Consumer harm from pricing practices: in particular, whether consumers with equivalent risk pay different prices, how many

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<sup>69</sup> Section 11(1) of the Enterprise Act 2002 makes provision for designated consumer bodies to make super-complaints. A super-complaint is a complaint submitted by a designated consumer body that ‘any feature, or combination of features, of a market in the United Kingdom for goods or services is or appears to be significantly harming the interests of consumers’. Within 90 days after the day on which a super-complaint is received, the CMA must say publicly how it proposes to deal with it.

<sup>70</sup> MS18/1.1, [General Insurance Pricing Practices Terms of reference](#), October 2018.

consumers are affected by higher prices and who they are, for example whether certain consumers may be vulnerable, and why some consumers end up paying higher prices.

- (b) Fairness of pricing practices: whether firms' pricing models and strategies lead them to take advantage of certain consumers, whether firms give consumers clear and accurate information at renewal and the impact of contractual terms, such as auto-renewal.<sup>71</sup>
- (c) Impact of pricing practices on competition: whether the current distribution and pricing of insurance in these markets deliver effective competition for all consumers.

119. The FCA expects to issue an interim report in summer 2019.

#### *Wholesale Insurance Broker market study*

120. In February 2019, the FCA published the final report in its Wholesale Insurance Broker market study.<sup>72</sup>

121. The FCA did not find evidence of significant levels of harm to competition that would require intrusive remedies. However, it did identify some areas requiring further action within its usual supervisory processes and/or competition law enforcement. These areas include conflicts of interest, the information firms disclose to clients and a small number of contractual agreements between brokers and insurers which include clauses that could potentially be restrictive. Given the dynamic nature of the market, the FCA will continue to monitor developments in broker business models and the effectiveness of competition.

#### *Mortgages market study*

122. The FCA published the final report in its Mortgages market study in March 2019.<sup>73</sup> It found that the mortgage market works well in many respects, but that it could work better in areas such as:

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<sup>71</sup> Alongside the general insurance pricing practices market study terms of reference, the FCA published a discussion paper on the fairness of certain pricing practices in October 2018, which focuses on price discrimination and loyalty pricing: see [DP18/9: Fair Pricing in Financial Services](#), October 2018. The feedback to this discussion paper will inform the FCA's general insurance pricing practices market study.

<sup>72</sup> MS17/2.2, [Wholesale Insurance Broker Market Study Final Report](#), February 2019.

<sup>73</sup> FCA, Mortgages final report, March 2019.



- (a) increased lender participation in the tools being developed to help customers identify which mortgage products that they are likely to qualify for;
  - (b) more innovation in the distribution channels for mortgage products;
  - (c) a tool to help consumers find a broker that meets their needs; and
  - (d) more help for mortgage customers who cannot switch to a better deal (sometimes referred to as 'mortgage prisoners').
123. Alongside the final report, the FCA published a policy consultation aimed at helping mortgage prisoners.<sup>74</sup> It plans to publish a second policy consultation later in 2019 proposing refinements to its mortgage advice rules and guidance.

#### *Investment Platforms market study*

124. The FCA published the final report in its Investment Platforms market study in March 2019.<sup>75</sup>
125. Investment platforms arrange, safeguard and administer investments on behalf of consumers and offer them access to retail investment products from a number of different providers. Consumers can use platforms to access information and tools to inform and help them with investment choices and can use them to make transactions, such as buying and selling shares and funds.
126. The FCA found that while competition is generally working well, some consumers and financial advisers can find it difficult to shop around and switch to a platform that better meets their needs. Consumers can find it difficult to switch due to the time, complexity and cost involved, driven in part by the exit charges they incur, and difficulties faced when

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<sup>74</sup> CP19/14, [Mortgage customers: proposed changes to responsible lending rules and guidance](#), March 2019.

<sup>75</sup> FCA, [Investment platforms final report](#), March 2019.

consumers hold investments (units) in a class which is specific to their platform and does not match a unit class on another platform.

127. Alongside the final report, the FCA published a consultation paper on its proposed package of remedies, which focus on making the switching process more efficient, removing or reducing exit fees and enabling unit class conversion.<sup>76</sup>

#### *Retirement outcomes review*

128. In June 2018, the FCA published the final report in its Retirement Outcomes review,<sup>77</sup> which looked at how the retirement income market is evolving since the pensions freedoms were introduced in April 2015. The review focused on consumers who do not take advice. The evidence shows that some consumers are at risk of harm, for example, losing out on investment growth by holding their pot in cash and paying too much in charges. Alongside the final report, the FCA consulted on a proposed package of remedies<sup>78</sup>
129. In January 2019, the FCA published a policy statement setting out the final rules and guidance on the remedies that it consulted on in June 2018.<sup>79</sup> The policy statement included new rules and guidance on the information firms send to consumers before and after they decide how to access their pension savings, and changes to make the cost of drawdown products clearer and more comparable. These remedies aim to increase consumer engagement with retirement income decisions, promote competition and protect against poor outcomes. Some of these changes will come into force on 1 November 2019 and some on 6 April 2020.
130. The FCA also published a consultation paper on further draft rules and guidance to be included in its Handbook including proposals to require pension scheme providers to:

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<sup>76</sup> CP19/12, [Consultation on Investment Platforms Market Study remedies](#), March 2019.

<sup>77</sup> MS16/1.3, [Retirement Outcomes Review Final Report](#), June 2018.

<sup>78</sup> CP18/17, [Retirement Outcomes Review: Proposed changes to our rules and guidance](#), June 2018.

<sup>79</sup> PS19/1, [Retirement Outcomes Review: feedback on CP18/17 and our final rules and guidance](#), January 2019.

- (a) offer non-advised drawdown consumers a range of investment solutions ('investment pathways');
- (b) ensure that the investment of drawdown pots in cash is an active consumer decision; and
- (c) disclose to consumers the actual charges they pay in the decumulation phase.<sup>80</sup>

131. The FCA plans to publish its finalised Handbook text in a policy statement in July 2019.

### *Strategic review of Retail Banking Business Models*

132. The strategic review, launched in May 2017,<sup>81</sup> aimed to give the FCA a greater understanding of retail banks' business models and the sources of competitive advantage that have helped the major banks to keep their market shares in the recent past. The review looked at how PCAs are paid for, and the possible impact of technological and regulatory developments such as Open Banking and changes to payment services from PSD2. The review also examined the impact of branch closures.

133. The FCA published the final report in December 2018.<sup>82</sup> The review found that the PCA is an important source of competitive advantage for major banks. These banks generated higher returns than other banks and building societies because they had lower funding costs, higher yields on lending, higher revenues on transactional banking, and lower capital requirements. Many consumers and SMEs earn little or no interest on credit balances and pay high charges on transactional banking and lending products. The review also found that banks are closing branches across all regions of the UK in response to declining use, and consumers are having to travel further to reach branches.

134. As a result of this review, the FCA will:

- (a) continue to monitor retail banking business models;

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<sup>80</sup> CP19/5, [Retirement Outcomes Review: Investment pathways and other proposed changes to our rules and guidance](#), January 2019.

<sup>81</sup> FCA, [Strategic Review of Retail Banking Business Models: Purpose and Scope](#), October 2017.

<sup>82</sup> FCA, [Strategic Review of Retail Banking Business Models, Final Report](#), December 2018.

- (b) seek to understand the value chain in new payment services business models; and
  - (c) carry out exploratory work to understand certain aspects of SME banking.
135. The FCA has also identified three potential areas requiring coordinated action in the future to ensure the retail banking sector works well for consumers:
- (a) continued access to banking services;
  - (b) appropriate use of customer data; and
  - (c) system resilience and effective prevention of financial crime and fraud.

### *Motor Finance review*

136. In March 2019, the FCA published its final report in its review of motor finance.<sup>83</sup> The FCA found that the way commission arrangements operate in motor finance can cause consumer harm on a potentially significant scale.
137. In particular, some popular commission models link the broker's commission to the customer's interest rate while allowing brokers discretion to set the interest rate, leading to conflicts of interest which lenders are not adequately controlling. As a result, customers pay significantly more for motor finance (around £300 million more annually, according to FCA estimates) compared to a baseline of flat fee commission models.
138. The FCA also found that consumers may not be given enough information before entering into a motor finance agreement. It was not satisfied that all lenders were complying with the rules on assessing creditworthiness.
139. The FCA is assessing the options for intervening to address the harm it has identified from commission arrangements. This could involve consulting on changes to FCA rules to strengthen existing provisions,

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<sup>83</sup> FCA, [Our work on motor finance – final findings](#), March 2019.

or other policy interventions such as banning certain types of commission model or limiting broker discretion to set rates.

140. The FCA will follow up with individual firms where they identified failures and expects all firms to ensure they are complying with all relevant regulatory requirements and treating customers fairly.

#### *Effective Competition in Non-Workplace Pensions Discussion Paper*

141. In February 2018, the FCA published a discussion paper on non-workplace pensions.<sup>84</sup> The FCA was looking to understand whether competition is working well in the market for non-workplace pensions and whether or not there is a need to go further to protect consumers.
142. The FCA intends to publish a feedback statement in summer 2019, which will include a summary of responses to the discussion paper as well as findings from the FCA's data collection and consumer research exercise.

#### *High Cost Credit review*

143. The FCA published final rules for the introduction of a price cap on rent-to-own products in March 2019.<sup>85</sup> The price cap, which came into force on 1 April 2019 for new products coming to the market for the first time, ensures that consumers do not pay credit costs (total interest payable) that are higher than the price of the product, including delivery and installation. The FCA published a consultation paper in December 2018 with proposals to provide greater protection for consumers who use an overdraft, particularly the most vulnerable.<sup>86</sup> The proposals will, if implemented, simplify the way banks charge for overdrafts and tackle high charging for unarranged overdrafts, making overdrafts simpler, fairer, and easier to manage.
144. The consultation paper built on the CMA's recommendations in its retail banking market investigation, including the recommendation to explore measures to improve unarranged overdraft alerts. The consultation also included a policy statement requiring banks and building societies to provide digital eligibility tools, overdraft charge calculators and overdraft

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<sup>84</sup> DP 18/1: [Effective competition in non-workplace pensions](#), February 2018.

<sup>85</sup> PS19/6, [Rent-to-own price cap – feedback on CP18/35 and final rules](#), March 2019.

<sup>86</sup> CP18/42, [High-Cost Credit Review: Overdrafts consultation paper and policy statement](#), December 2018.

alerts to help all consumers better engage with and understand their overdraft.

145. In December 2018 the FCA also published a separate consultation paper proposing additional protections on 'buy now, pay later' offers. These included stopping backdated interest for repayments made during the offer period and are expected to save consumers around £40-60 million.<sup>87</sup> This paper also included a policy statement, which made changes to tackle harm to consumers in the home-collected credit, catalogue credit and store card sectors.
146. The FCA intends to publish any final rules on the proposals in the consultations on overdrafts and on 'buy now, pay later' offers in June 2019.

## **PSR**

### *Card acquiring services*

147. The PSR launched a market review<sup>88</sup> in January 2019 into the supply of card-acquiring services in the UK to determine whether the supply of these services is working well for merchants, and ultimately consumers.<sup>89</sup> The concerns that prompted the market review are set out in the published terms of reference and include concerns that:
  - (a) acquirers<sup>90</sup> have not passed on to smaller merchants the savings they made from the interchange fee caps introduced by the Interchange Fee Regulation;<sup>91</sup>
  - (b) there is a lack of transparency around the fees merchants pay to accept card payments;

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<sup>87</sup> CP18/43, [High-cost Credit Review: Feedback on CP18/12 with final rules and guidance and consultation on Buy Now Pay Later offers](#), December 2018.

<sup>88</sup> PSR, MR18/1.2 [Market Review into the supply of card-acquiring services: Terms of Reference](#), January 2019.

<sup>89</sup> Card payment systems enable consumers to make payments using debit and credit cards. These systems are administered by card scheme operators. To accept card payments, merchants need to buy card-acquiring services. The costs merchants incur for such services may ultimately be reflected in the prices they charge or the services they provide to their customers.

<sup>90</sup> Merchants can contract with acquirers to obtain services that will enable them to accept card payments, including card-acquiring services.

<sup>91</sup> Regulation (EU) 2015/751 on interchange fees for card-based payment transactions.

- (c) there are barriers making it hard for merchants to compare and switch acquirers, and they tend not to shop around;
  - (d) there are barriers to offering services that would help merchants to compare and switch between acquirers;
  - (e) the fees that card scheme operators charge to acquirers (called scheme fees), and the rules they set, favour larger acquirers; and
  - (f) the scheme fee portion of the fees that merchants pay to acquirers is increasing significantly.
148. The PSR is now gathering information and evidence to inform its assessment of how the supply of card-acquiring services is working. The PSR aims to publish its interim report, which will present the analysis and preliminary conclusions for consultation, at the end of 2019.

#### *Infrastructure market review*

149. The PSR published its final decision on remedies following its market review into the ownership and competitiveness of central payment systems infrastructure provision in June 2017.<sup>92</sup> One of the remedies – the competitive procurement remedy – required the operators of Bacs, FPS and LINK to have in place by a specified date competitively procured central infrastructure contracts. The purpose of the competitive procurement remedy is to introduce competition in the market for central infrastructure for Bacs, FPS and LINK for the first time.
150. LINK began its competitive procurement process in January 2018 and is set to select its provider during 2019. In December 2018, Pay.UK (which is the current operator of Bacs, Faster Payments (FPS) and Cheque Image Clearing System (ICS) following the consolidation of the three operators) began its competitive procurement for the central infrastructure of the New Payments Architecture (NPA). The winning supplier(s) of Pay.UK's procurement is/are expected to be selected in Q2 2020. The PSR will be closely monitoring the procurement process.

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<sup>92</sup> See paragraphs 319 to 324 of the Annual Concurrency Report 2018.

## **NIAUR**

### *Review of gas market competitiveness in Greater Belfast*

151. In November 2017, the NIAUR commenced a review of the competitiveness of the domestic gas markets in Northern Ireland, with particular focus on the Greater Belfast area. This project was undertaken as industry participants sought clarity on the NIAUR's strategic position regarding the gas market.
152. The market was assessed through the analysis of various metrics, including market shares, switching rates, and consumer satisfaction. Industry stakeholders were also invited to participate in a structured interview at the NIAUR offices. The main points highlighted by stakeholders regarding the lack of competitiveness were:
- (a) a lack of supplier entry to the domestic gas markets to date, although several suppliers indicated they were currently scoping gas market entry;
  - (b) a lack of headroom in the regulated tariff to allow for suppliers to enter and compete against;
  - (c) "limited" or "archaic" switching and prepayment top-up infrastructure systems; and
  - (d) having three separate Distribution Network Operators, with their own processes and requirements, posed a barrier to market entry.
153. The findings of the review were presented to the NIAUR Board. Overall, the Board considered that, while there were limitations in the gas infrastructure market compared with electricity, the cost of system upgrades would outweigh the benefits, in particular as the small size of the market meant that competitiveness may only ever be limited. Consequently, the current regulatory approach, which has delivered low tariffs, customer trust, protection and a significant growth in connections should be maintained, while the NIAUR will continue to monitor how the domestic gas markets develop and allow any future competition in the gas market to emerge organically.



## **Ofwat**

### *Review of the business retail water market in England and Wales*

154. In July 2018, Ofwat published the "Open for business" report<sup>93</sup> reporting on the first year in which business customers in England and Wales were able to switch their water and wastewater retail provider. The report looked at:
- (a) retailer activity - what they are offering, extent of new entry, market share developments, question of retailer performance and supporting the market;
  - (b) the role of wholesalers; and
  - (c) customer engagement, experiences and outcomes.
155. The report highlighted that the market had begun to deliver a number of benefits both to customers who had switched or renegotiated with their retailer, and those who had not. Awareness, market engagement and savings were in general greater for larger customers.
156. Ofwat identified, in particular, three frictions hindering the market from reaching its full potential, including for micro and SME customers:
- (a) a lack of complete, accurate and timely market data;
  - (b) poor aggregate performance of wholesalers against the industry standards; and
  - (c) poor interaction between wholesalers and retailers which has sometimes made it hard for retailers to operate and offer services in the market.
157. Ofwat highlighted that all market participants have a role in addressing these frictions and that Ofwat would also take forward a number of work strands aimed at ensuring the market delivers for customers.

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<sup>93</sup> Ofwat, [Open for business: Reviewing the first year of the business retail water market](#), July 2018.

## **ORR**

### *Delay Repay claims companies*

158. In November 2018, ORR launched a review into the role that claims companies play in Delay Repay compensation claims, and the extent to which their increased participation in the market could impact passengers and train operators.<sup>94</sup> The market review considers:
- (a) the extent to which the presence of Delay Repay claims companies can facilitate innovation and the introduction of new technology that benefits passengers and businesses (i.e. are they good or useful for passengers);
  - (b) how they operate and earn money, and whether consumers and businesses would benefit from greater transparency over pricing; and
  - (c) the impact on train operating companies and how Delay Repay claims companies can and should interact with them.
159. ORR has undertaken extensive stakeholder engagement with key industry stakeholders, including Delay Repay claims companies and train operating companies as well as the Department for Transport, Transport Focus and the RDG and in February 2019 commissioned research into the role of third party claims companies in other key UK regulated sectors (water, energy, financial services and aviation).<sup>95</sup> The research will be completed during spring 2019, and will look at:
- (a) what lessons can be learned from other regulators' work in the area of third party claims companies;
  - (b) any existing evidence on consumers' behaviour and drivers behind consumer choices whether or not to claim compensation in similar retail markets (that involve search costs and a lack of awareness); and
  - (c) the extent to which innovation can be used as a tool to increase consumer engagement with Delay Repay markets.

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<sup>94</sup> ORR, [Market review into rail compensation claims companies](#), February 2019.

<sup>95</sup> ORR, [Market review into rail compensation claims companies](#), February 2019.

## *Periodic review*

160. Periodic reviews are one of the principal mechanisms by which ORR holds Network Rail to account and secures value for money for users and funders of the railway. ORR published the final determination of its periodic review in October 2018 setting out what Network Rail should deliver in respect of its role in operating, maintaining and renewing its network in Control Period 6 (CP6, to run from 2019-2024) and how the funding available should be best used to support this.
161. The key changes relevant to promoting competition are:
- (a) The move to ‘route-level regulation’ is a form of comparative competition. The approach builds on Network Rail’s transformation to devolve more responsibility to its routes (the business units responsible for the day-to-day operation of the railway). ORR has determined a separate regulatory ‘settlement’ for each route, albeit delivering one final determination for Network Rail as a single company.
  - (b) During CP6, ORR will make and publish comparisons between routes, to provide stronger reputational incentives and use the sense of competitive rivalry to drive improvements. These comparisons will also enable routes’ customers to better hold the routes to account, help promote the sharing of best practice and to inform ORR’s approach to intervening and enforcing where necessary.
  - (c) System operation is about the set of activities and decisions relating to use of this network and its expansion over time. It typically relates to functions where coordination and/or the fair treatment of customers are particularly important. For CP6, the Network Rail ‘system operator’ will be required to report on its performance to its customers and to ORR. This should support industry decision-making about use of the network and possible ways to improve it, including around possible new entry to the market.

## **Ofcom**

### *Physical Infrastructure market review*

162. In November 2018, Ofcom published a consultation<sup>96</sup> in its Physical Infrastructure market review. In this consultation, Ofcom considered for the first time the competitiveness of the market for the supply of wholesale access to telecoms physical infrastructure. This is effectively the most upstream telecoms market, with wholesale access to telecoms physical infrastructure a pre-requisite for the provision of downstream telecoms services. Ofcom's provisional view is that BT has significant market power (SMP) in the market for the supply of wholesale access to telecoms physical infrastructure and proposes a package of remedies to address this, including unrestricted access to BT's physical infrastructure (including its duct and pole infrastructure operated by Openreach). It anticipates a final statement in April or May 2019.

### *Business Connectivity market review*

163. Ofcom is currently conducting a review of competition in the wholesale business connectivity (leased lines) markets with the proposed regulation expected to be in place from spring 2019 to March 2021. Ofcom consulted on its proposals for the wholesale business connectivity markets in November 2018 and is considering stakeholders' responses.
164. Ofcom has proposed two product markets: Contemporary Interface (CI) Access services, which provide connectivity to the customer's premises, and CI Inter-exchange connectivity services, which provide connectivity between BT exchanges. Ofcom's provisional view is that BT has SMP in the CI Access services market in all areas of the UK except the Central London Area and the Hull Area, and in the CI Inter-exchange connectivity services market at BT exchanges where BT is the only supplier or where there is only one rival present.
165. Ofcom's proposed remedies package takes account of different competitive conditions in different areas. In the CI Access services market, Ofcom has proposed lighter remedies in areas where BT

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<sup>96</sup> ORR, [Market review into rail compensation claims companies](#), February 2019.

already has competition from two or more rivals, with the aim of facilitating network competition. In the CI Inter-exchange connectivity services market, Ofcom proposes dark fibre access for inter-exchange circuits from exchanges where BT faces no competition.

#### *Wholesale Broadband Access market review*

166. Ofcom published its statement on the Wholesale Broadband Access (WBA) market review in July 2018.<sup>97</sup> The WBA market is positioned between retail broadband services, ie the market for services that consumers buy, and Wholesale Local Access market which relates to the physical connections to consumers' premises.
167. Ofcom found that that the size of the WBA market where there is not sufficient competition from other telecoms providers (Market A) has reduced from around 10% in 2014 to less than 1% today. Ofcom determined that BT has SMP in Market A and imposed some light touch remedies to protect consumers in these areas. Ofcom found that no operator has SMP in the provision of WBA services in the rest of the country (Market B).

#### *Personal Numbering – review of the 070-number range*

168. As part of the Call Cost review, announced in May 2017, Ofcom conducted a review of the 070-number range looking at the cost of calling 070-numbers and the frequent misuse of the number range. Ofcom found that communications providers holding 070-numbers had SMP in those numbers which allowed them to set high wholesale termination rates for calls made to their numbers. This harms consumers, as it leads to high retail prices. Consumers are generally unable to distinguish 070-numbers from calls made to mobile numbers (which begin with '07x' and are much cheaper to call), resulting in 'bill shock'. In addition, high wholesale termination rates provide incentives for the fraudulent misuse of 070-numbers. This has contributed to the 070-number range gaining a poor reputation.

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<sup>97</sup> Ofcom, [Wholesale Broadband Access Market Review](#), July 2018.

169. Ofcom published its final statement in October 2018, setting out its decision to impose a charge control on all 070 providers which will cap the wholesale termination rate they can charge at the same rate as the mobile termination rate (0.479ppm from 1 April 2019). This rate was chosen because for callers, the effective benefit of the range is the same as calling someone on a mobile number. The regulation comes into effect on 1 October 2019.<sup>98</sup>

## **Ofgem**

### *Future supply market arrangements*

170. Ofgem has said that it wants a future retail market where all consumers, whether they engage in the market or not, receive good services and share in the benefits of competition and innovation, while being protected from risks. There is evidence (including via Ofgem’s Innovation Link) that current “supplier hub” market arrangements<sup>99</sup> can mean it is difficult for market participants to bring beneficial, and potentially disruptive, propositions to market. It is in this context that Ofgem has been exploring whether the supplier hub model is still fit for purpose or whether Ofgem and government should consider changes as the energy system evolves.
171. Based on the extensive engagement and analysis during its call for evidence on the current supplier hub model, Ofgem concluded that current retail market design may not be fit for purpose for energy consumers over the longer term, and there is a strong case for considering fundamental reforms.<sup>100</sup> In line with this conclusion, the government and Ofgem have launched a comprehensive joint review into the retail energy market that will consider options for ensuring the market can better serve consumers’ through enabling innovative business models and propositions, while ensuring future consumers are appropriately protected – regardless of their level of engagement.<sup>101</sup>

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<sup>98</sup> Ofcom, [Final statement : Personal numbering – Review of the 070 number range](#), October 2018.

<sup>99</sup> Where the supplier is positioned as the primary intermediary between consumers and the energy system. With this position comes a wide range of roles and responsibilities that have become entrenched in legal frameworks, licensing arrangements and industry rules. For consumers, it means they are obliged to access the energy system through a licensed supplier, with these firms recovering costs arising through their energy use.

<sup>100</sup> Ofgem, [Future of supply market arrangements – call for evidence](#), November 2017.

<sup>101</sup> BEIS, [Future Energy Retail Market Review](#), November 2018.

Ofgem expects the review to report preliminary findings by summer 2019.

## **CMA**

### *'Loyalty penalty' super-complaint*

172. In September 2018, the CMA received a super-complaint from Citizens Advice raising concerns about the 'loyalty penalty' faced by longstanding customers who can pay more for the same services than new customers. The super-complaint highlighted concerns in five markets:
- (a) mobile and broadband, regulated by Ofcom; and
  - (b) cash savings, home insurance and mortgages, regulated by the FCA.
173. The CMA worked closely with these regulators to understand ongoing developments and work in these markets, as well as working with staff seconded from the regulators to the project team to provide technical expertise. While the energy market was not in scope of the CMA's investigation, Ofgem also provided valuable insights from its experience of running collective switch trials and the introduction of an energy price cap.
174. The CMA published its response in December 2018,<sup>102</sup> finding that a substantial loyalty penalty – of around £4 billion in total across the five markets – is paid by millions of consumers each year, with vulnerable consumers (such as those on low incomes, or the elderly) more likely to pay a loyalty penalty as they can face additional challenges to switching providers or negotiating deals. The CMA also found evidence of harmful business practices across a range of sectors, which make it harder for existing customers to find or move to better deals; frustrating consumers and eroding trust in markets. Overall the CMA concluded that not enough had been done previously to address these issues and that much more needed to be done to tackle these problems and protect vulnerable consumers.

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<sup>102</sup> [Tackling the loyalty penalty: response to the super-complaint made by Citizens Advice on 28 September 2018](#), December 2018.

175. The CMA set out a significant package of reforms to help consumers get better fairer deals. These will be taken forward by regulators, government and the CMA:

*Stopping harmful business practices*

- (a) Bolder use of existing enforcement and regulatory powers to tackle harmful business practices (CMA/Regulators).
- (b) Legislative and/or regulatory changes to effectively tackle harmful business practices and develop principles on these (CMA/government).
- (c) Publicising the loyalty penalty to hold suppliers to account.
- (d) Publication of metrics on the size of the loyalty penalty in key markets and for each supplier, through for example an annual joint loyalty penalty report through the UKRN as part of its performance scorecard work (CMA/Regulators).

*Giving consumers more help to get better deals*

- (e) Empowering intermediaries to support switching for example, giving a greater role to local consumer-facing advisory organisations, such as Citizens Advice, who could more actively support switching for vulnerable consumers (government/consumer organisations).
- (f) Press ahead with the Smart Data Review and utilise smart data markets with the biggest potential for transformation (government/FCA/Ofcom/CMA).
- (g) Share best practice on 'nudge' remedies that have been tested and shown to work; roll out and potentially strengthen some nudge remedies (CMA/the UK Competition Network).
- (h) Consideration of targeted pricing regulation when assessing markets, particularly to protect vulnerable consumers (Regulators).
- (i) Assess the feasibility of matching price data to a recurring, large scale UK survey to improve the understanding of who pays the loyalty penalty across markets and whether vulnerable consumers are particularly adversely affected (CMA/Regulators).



176. The CMA also made a number of recommendations specifically to Ofcom and the FCA to take forward as part of their ongoing work in these five markets:
- (a) In mobile, the CMA supported a requirement on providers to move customers on bundled handset and airtime contracts onto a fairer tariff when their minimum contract period ends and recommended that Ofcom tackle low levels of awareness/understanding of SIM-only deals.
  - (b) In broadband, the CMA welcomed Ofcom's review on price differentials and recommended that it consider pricing interventions especially to protect vulnerable consumers, for example a targeted safeguard cap, and review the feasibility of collective switching/
  - (c) In cash savings, the CMA recommended that the FCA evaluate the impact of the Basic Savings Rate in this market if applied, and if it has not had the intended impact, consider alternative pricing interventions such as a targeted price floor. It also recommended that the FCA review the feasibility of collective switching.
  - (d) In insurance, the CMA welcomed the FCA's market study into general insurance pricing practices and recommended that it consider pricing interventions to limit price walking (where prices gradually creep up year on year) and explore a greater role for intermediaries in this market.
  - (e) In mortgages, the CMA recommended that the FCA find out more about the 10% of longstanding customers who do not switch and look at what measures can be taken to help or protect them.
177. Following the super-complaint, the CMA launched two consumer enforcement cases in the anti-virus software and online video gaming markets to investigate various practices which may make it more difficult for existing customers to move or find better deals, including auto-renewals, and their terms and conditions (including cancellation and refund policies).
178. The CMA is committed to continuing to drive this work forward and ensure changes are made to address the loyalty penalty and is working with government and regulators to take forward its recommendations. The CMA will update the joint government-regulator Consumer Forum,

led by the Minister for Consumer Affairs, and publish an update on progress in the summer.

### *Statutory Audit market study*

179. The CMA's market study into the statutory audit market in the UK was launched in October 2018.<sup>103</sup> It focused on three sets of issues:
- (a) choice and switching;
  - (b) the sector's long-term resilience; and
  - (c) the incentives between audited companies, audit firms and investors.
180. The CMA considered responses from a wide number of stakeholders to its invitation to comment, and in December 2018 it published an update paper which included proposals for remedies for consultation. The CMA proposed four key recommendations in the update paper to create incentives for improved audit quality, in tandem with improved regulation. These are:
- (a) closer regulatory scrutiny of auditor appointment and management clearly focussed on quality and challenge from auditors;
  - (b) mandatory joint audit for FTSE350 companies, always including at least one auditor which is from outside the 'Big Four';
  - (c) splitting audit and advisory businesses, either by a full structural split of advisory and other non-audit services away from audit, or for firms' audit and non-audit businesses to be split into clearly defined separate operating entities; and
  - (d) obliging audits to be peer reviewed, commissioned by and reported to the FRC.
181. The CMA is considering responses to its update paper as it works towards its final report.

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<sup>103</sup> For progress of the statutory audit market study please see [the CMA case page](#).

## Promoting competitive outcomes

182. Our aim is the achievement of competitive outcomes in regulated sectors. Throughout the past 12 months, the regulators have developed a range of policies and/or initiatives to achieve such outcomes, including by seeking to open up access to markets as well as to increase transparency, switching and encourage innovation. These initiatives have been developed with a view to promoting and securing competitive outcomes which will ultimately benefit consumers. Much can also be achieved through advocacy and other work. This section provides a summary of the activity carried out by the regulators and the CMA that has been aimed at promoting competitive outcomes.

### Barriers to entry/opening up access to markets

183. 'Barriers to entry' are the obstacles that new entrants to a market might face when trying to establish a business to compete in that market. There are often very good reasons for regulators imposing barriers to entry such as securing minimum health and safety standards or ensuring consumer protection.<sup>104</sup> However, opening access to markets, where it is appropriate to do so, in order to allow new entrants to enter the market is important to help drive effective competition. New entrants to the market, or even the mere threat of new entry, can actively encourage all businesses in that market to innovate and/or support the development of new products and services for the benefit of consumers. Therefore, regulators are constantly undertaking work to lower barriers to entry where it might be appropriate to do so. The following are highlights of the work undertaken by concurrent regulators during the period of this report.

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<sup>104</sup> For example, Ofgem is currently reviewing its approach to supplier licensing, to ensure that appropriate protections are in place against poor customer service and financial instability. Ofgem is proposing to strengthen the criteria used to assess supply licence applications and amend the process for applying for a licence. Ofcom intends to increase ongoing scrutiny and oversight of those already operating in the energy retail markets and are seeking views on options for achieving this. See: Ofgem, [Supplier Licensing Review](#).

## ***Railway services***

### *Access to the network*

184. ORR has powers to consider applications for access to the rail network by any operator, including open access operators<sup>105</sup> whose services may compete with those of franchise/concession operators.<sup>106</sup> Over the period of this report, ORR has approved two<sup>107</sup> and rejected one<sup>108</sup> open access application.
185. In December 2018, the ORR launched a project to develop a framework for monitoring the impact of, and response to, open access. The new framework will enable ORR to be more proactive by providing a better understanding of the types of behaviours and responses that might hinder greater competition on railways, and of the impact of open access on a range of competitive parameters.
186. ORR also consulted on two changes to the way in which it monitors and applies the open access regime:
- (a) From April 2019, ORR plans to increase the infrastructure cost charge for new open access operators (and existing operators that substantially modify their services) providing certain services, while changing the access policy to increase the likelihood that services incurring the new charge will be granted

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<sup>105</sup> Under the Railways Act 1993, sections 17-18 and following sections and under The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 (AMR), Part 2. ORR has also an appeal role under regulation 32 of the AMR. Open access operators compete with franchised train operators on the GB mainline.

<sup>106</sup> The competition open access operators introduce has been shown to deliver significant benefits including: lower fares, improvements to service levels and growth in the market for rail travel. They were also the first to introduce innovative services, such as free WiFi for all passengers. However, there is a risk that open access operators might cherry pick the most profitable services. Given the public subsidies involved in franchised services, this would result in the cost of the railway to government going up. ORR policy must take this into account alongside the potential benefits of more open access.

<sup>107</sup> ORR approved an application from Hull Trains for the extension of an additional weekend service between Kings Cross and Hull; and an application made by Great North Western Railway for services between London Euston and Blackpool North.

<sup>108</sup> ORR rejected an application from Grand Southern for services between London Waterloo and Southampton Central.

access rights. This should encourage more competition in the passenger rail market.

- (b) ORR will also have to implement the 'Economic Equilibrium' test<sup>109</sup> as part of its assessment of track access applications. This test will consider the impact of the new operator on the existing franchise operator alongside the passenger benefits.<sup>110</sup>

### *Access to facilities*

187. ORR has powers to consider applications for access to facilities or services.<sup>111</sup> In April 2016, ORR received an appeal from TFL regarding access to the Heathrow Rail Infrastructure for the operation of Crossrail services to the airport.<sup>112</sup> Following a series of discussions between ORR and the parties, the majority of the appeal points were resolved by mutual agreement. TfL and Heathrow were unable to agree on three points, which were the subject of ORR's Decision of April 2018.

### *Payment systems*

188. During the reporting period, the PSR oversaw the creation of Pay.UK, which consolidated the governance of Bacs, FPS and the new ICS in line with the Payments Strategy Forum's strategy. The consolidation is intended to facilitate the development and delivery of an NPA, which will be designed to drive competition and innovation in retail payment systems and facilitate entry by new service providers. The PSR will continue to monitor developments in Pay.UK's establishment as a new organisation.<sup>113</sup>

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<sup>109</sup> The Economic Equilibrium test is included in an EU Implementing Regulation which applies from 1 January 2019, in time for the working timetable starting on 12 December 2020.

<sup>110</sup> The Economic Equilibrium test complements ORR's existing access policy, which already requires it to weigh up a number of factors including whether there is fair and efficient use of capacity on the network and whether the new services would enable greater competition.

<sup>111</sup> Under the Railways Act 1993, sections 17-18 and following sections and under The Railways (Access, Management and licensing of Railway Undertakings) Regulations 2016 (AMR), Part 2. ORR has also and appeal role under regulation 32 of the AMR.

<sup>112</sup> [Transport for London appeal under regulation 29 and complaint under regulation 30 of the Railways Infrastructure \(Access and Management\) Regulations](#).

<sup>113</sup> Please see the [What we do](#) section of the Pay.UK website for further information.

189. In July 2018, following a call for information, the PSR published a report summarising its understanding of the newly developing contactless mobile payments<sup>114</sup> sector. The PSR did not find any major concerns or features of the market that appeared to hinder competition and innovation. However, the PSR will continue to keep the sector under observation as it develops and will take action as necessary to address any problems that may arise.

### ***Water and sewerage services in England and Wales***

190. A report commissioned by Ofwat in 2017 identified a number of potential barriers faced by companies wishing to participate in the new appointments and variations (NAV) market.<sup>115</sup> As part of this report, Ofwat committed to a series of steps to address potential regulatory and administrative barriers. Ofwat progressed these during 2018-19, updating its NAV application guidance,<sup>116</sup> publishing a new standardised application form, and reducing the application assessment timescale.

191. Ofwat also published a revision of its NAV policy guidelines in November 2018, with the aim of helping the market function more efficiently and providing greater clarity on Ofwat's approach to assessing whether a site meets the criteria for a NAV.

## **Promoting innovation**

### ***Financial services***

192. FCA Innovate, which aims to encourage innovation, has received over 1200 applications and supported more than 500 firms since it was created in 2014.<sup>117</sup> The support FCA Innovate provides includes guidance on applying for FCA authorisation, a regulatory sandbox to live test innovative products, services and business models, and feedback to firms developing automated advice and guidance models.

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<sup>114</sup> Contactless mobile payments are in-store payments that consumers make by using apps installed on their mobile devices. See the PSR's [Contactless mobile payments - our report](#) for further information.

<sup>115</sup> Whereby new entrants compete for the market to become the new monopoly provider for a particular geography.

<sup>116</sup> Ofwat, [Revisions to NAV Policy Guidelines](#), November 2018.

<sup>117</sup> Please refer to the [Regulatory sandbox - cohort 4](#) pages on the FCA website for further information.

193. The FCA also held its first Innovate open day in January 2019, which covered trends and challenges and was attended by over 200 representatives from a wide range of firms.

### ***Payment systems***

194. The PSR's work to improve access to payment systems by overseeing the creation of Pay.UK and delivery of an NPA, which is designed to drive competition and innovation in retail payment systems including facilitating entry by new service providers, is described above (see paragraph 188).<sup>118</sup>

### ***Energy***

195. Innovation Link, launched in December 2016, provides fast, frank feedback for energy sector providers on the regulatory implications of proposed innovations and a regulatory sandbox allowing for live testing of innovations.<sup>119</sup>
196. In addition, Ofgem has prioritised reforms to the rules regulating supplier-customer communications as part of its move to principles-based regulation, which Ofgem believes will help drive innovation by removing unnecessary prescription.
197. Finally, the NIAUR (in conjunction with the Commission for Regulation of Utilities in the Republic of Ireland) led the development and introduction of new arrangements for trading wholesale electricity across the island of Ireland. These new arrangements, referred to as the I-SEM,<sup>120</sup> were successfully introduced in October 2018 and aim to deliver a more competitive market environment making more efficient use of assets such as cross border electricity interconnectors and facilitating new market entry.<sup>121</sup>

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<sup>118</sup> Pay.UK took responsibility in December 2017 for delivering aspects of the Payments Strategy Forum's strategy and blueprint, including the development and delivery of the NPA.

<sup>119</sup> In its first year Innovation Link supported over 150 innovators, and another 100 in 2018.

<sup>120</sup> For more information, please see the [I-SEM](#) pages of the NIAUR website.

<sup>121</sup> A key aspect of the I-SEM is the introduction of a new Capacity Remuneration Mechanism (CRM) which allocates capacity contracts through a competitive auction process. The new CRM aims to ensure that

## ***Water and sewerage services in England and Wales***

198. Ofwat has been working with the Environment Agency, Drinking Water Inspectorate and Department for Environment, Food and Rural Affairs on provisions for the potential introduction of bilateral markets.<sup>122</sup> Ofwat intends to publish a call for inputs in 2019.

## **Transparency and trust in markets**

199. Nobody likes to feel as though they have been ripped off and this is even more the case when they are purchasing what they view as an 'essential service' such as those in the regulated sectors. Empowered consumers, who have access to transparent and timely information, play a critical role in driving competitive markets and increasing trust in markets with wider society. Part of making sure markets can be trusted is helping consumers across the UK understand the benefits that competitive markets bring to the economy and society overall. Ensuring that consumers can make informed decisions and purchases, are treated fairly and actually receive what they believe they are purchasing is at the heart of ensuring trust in markets. The following highlights some of the work that the regulators have undertaken during the period of this report in order to increase transparency and trust in markets.

## ***Energy***

200. In Great Britain, Ofgem is providing regulatory oversight for the rollout of smart meters,<sup>123</sup> which provide customers with information about their energy consumption, enabling them to take control of their spending on energy and make more informed switching decisions, and allows suppliers to understand the real costs of the electricity consumed by their customers.

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consumers only pay for generation capacity that is needed and to provide signals for current and future investment to help ensure security of supply.

<sup>122</sup> The Water Act 2014 contains provisions allowing water retailers to contract bilaterally with third parties for the provision of water resources, as an alternative to the default of procuring water resources from the incumbent wholesaler. The incumbent water company would levy charges for access to and use of its system, including for services such as water treatment.

<sup>123</sup> The smart meter rollout will see around 53 million smart gas and electricity meters installed in over 30 million households and small businesses. As of end December 2018, around 16.09 million smart and advanced meters had been installed and, of these, around 14.94 million were installed in domestic premises. Around a quarter of all domestic meters operated by large energy suppliers are now smart meters.



201. In Northern Ireland, the NIAUR published its decision paper on measures to enhance the operation of the small business energy market during September 2018. The final measures taken forward include:
- (a) tariff transparency measures such as 21-day notice period for change in tariff/terms and conditions/contract period ending;
  - (b) a removal of automatic rollover contracts;
  - (c) deposits and exit fees to be set at a reasonable level; and
  - (d) making prepayment meters available for small business customers.<sup>124</sup>

### ***Water and sewerage services in England and Wales***

202. Ofwat is working with the business retail market to address difficulties faced by SMEs and microbusinesses in finding and comparing information on retailers' offers, by removing a number of identified frictions and identifying drivers behind poor interactions between wholesalers and retailers. In November 2018, Ofwat published a call for inputs focused on strengthening wholesaler performance in the market.<sup>125</sup> Ofwat is also monitoring work being progressed by the market operator, MOSL, to improve data quality in the market.
203. Ofwat is reviewing the existing price protections set out in the Retail Exit Code for the business retail market, which provides protections for customers who were transferred to a "deemed contract"<sup>126</sup> with a new retailer when their previous retailer (an incumbent water company) chose to exit the retail market. The way the Retail Exit Code controls

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<sup>124</sup> The NIAUR also consulted on a measure to increase price transparency requiring suppliers to publish pricing information on their websites or through a third party to give customers easier access to tariff information than is currently available. However, the Consumer Council for Northern Ireland have developed a price comparison tool for small business customers (launch date to be confirmed) so NIAUR has not mandated tariff transparency at this point but has stated in its decision paper that if suppliers do not provide price information voluntarily on their website or through a third party, NIAUR will mandate this through licence conditions. For more information, see [NIAUR measures to enhance the operation of the small business energy market in Northern Ireland](#).

<sup>125</sup> Ofwat, [Call for Inputs: Strengthening wholesaler performance and service in the business retail market](#), November 2018.

<sup>126</sup> A deemed contract is defined as "circumstances where the customer is receiving a water supply and/or wastewater service, but no contract has otherwise been agreed between the retailer and the customer." More information can be found on [Ofwat's website](#).

prices for customers on deemed contracts is likely to affect competition in the market as well as have an impact on any potential retailers looking to enter the market. Ofwat has seen promising signs of engagement in the market from business customers using high volumes of water and is therefore proposing to relax the regulatory price protections applicable to them. However, it is proposing to keep relatively tight price protections for the lowest usage customers (0-0.5 megalitres of water per year) who are not as engaged in the market.

## **Switching**

204. The ability to easily switch supplier allows customers to exert additional competitive pressure on suppliers. This can cause market participants to consider the prices they charge, the services they provide and even the products they offer for fear of 'losing' customers and market share. It also encourages greater engagement in the market from customers if the switching process is straightforward.

## **Energy**

205. Ofgem is leading a major programme to improve consumers' experience of switching and allow a domestic consumer to reliably switch supplier by the end of the next working day (with non-domestic consumers being the day after). The third-party services needed to support the new switching arrangements are currently being procured and Ofgem expects contracts to be in place very shortly. Ofgem will then lead a Design, Build and Test Phase for the development of the new systems and processes. New switching arrangements are expected to go live in mid-2021.<sup>127</sup>

## **Advocacy, competition awareness and compliance**

206. The CMA regularly issues targeted communication campaigns and materials to amplify the outcomes from enforcement cases, raising awareness of anti-competitive activity to help businesses ensure they do not infringe competition law. This work often involves issuing guidance to the relevant sector on competition compliance, contacting industry stakeholders directly, publishing open letters in the relevant

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<sup>127</sup> For more information, see Ofgem's [Switching Programme](#).

trade press and using social media channels to highlight the anti-competitive conduct in question. For example, in October 2018, the CMA launched a national awareness campaign to encourage whistle-blowers to expose business cartels, as well as to raise awareness amongst businesses about compliance. In addition, the CMA continues to explore new and innovative ways to promote its work, such as through targeted digital marketing campaigns and events to encourage complaints when firms see unfair practice by others.

207. Regulators have also undertaken work to promote competitive markets through publications and engagements with industry. Further information can be found on the regulators' respective websites, but examples of the type of work undertaken by regulators typically includes delivering speeches at conferences, meeting with and/or presenting to stakeholder groups, issuing open letters and circulating competition law guidance to targeted parties.

## General cooperation

208. The CMA and regulators have continued to cooperate more generally, in line with the practical arrangements set out in the Concurrency Regulations,<sup>128</sup> the Concurrency Guidance<sup>129</sup> and the bilateral Memorandums of Understanding agreed between the CMA and each of the sector regulators.<sup>130</sup>

## Information-sharing

209. During the period of this report, the CMA and the sector regulators have continued to exchange key information and comments in respect of the particular cases that they have been investigating, including emerging thinking and draft decisions, as provided for in Regulation 9 of the Concurrency Regulations and the Memorandums of Understanding. Additionally, and as in previous years, the CMA and the sector regulators have augmented the prescribed information-sharing process with more informal discussions and the sharing of know-how and relevant expertise.

## Case allocation

210. During the period of this report, case allocation has continued to take place smoothly, with the allocation to Ofgem, Ofcom and the FCA of new Competition Act 1998 investigations in their respective sectors, and with the CMA undertaking another investigation into the financial services sector. Irrespective of which organisation conducts the investigation, the CMA and the respective regulator have continued to use their complementary resources on each case, clearly continuing to demonstrate how effectively the concurrency regime works in practice.

## Support on casework

211. The CMA and sector regulators provide each other with direct assistance on casework, whether by sharing relevant policy (eg sharing

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<sup>128</sup> Competition Act 1998 (Concurrency) Regulations 2014.

<sup>129</sup> CMA, [CMA10: Regulated Industries: Guidance on concurrent application of competition law to regulated industries](#), March 2014.

<sup>130</sup> The Memoranda of Understandings with the concurrent competition regulators can be found on the [CMA's website](#).

internal guidance and template documents) or practical experience or by active involvement of officials at key stages of an investigation. The CMA and sector regulators have also worked cooperatively on issues arising in connection with their concurrent powers to apply the competition prohibitions under EU law.

### ***Support on casework under the Competition Act 1998***

212. The CMA and the regulators have regularly provided each other with assistance on Competition Act 1998 investigations in the regulated sectors during this period. This help includes procedural advice, technical expertise and support on substantive analysis to ensure consistent, high quality decisions and effective enforcement. For example, the FCA has provided the CMA with sectoral expertise in relation to the CMA's two investigations into suspected anticompetitive arrangements in the financial services sector (see paragraphs 39 to 40). The CMA has, amongst other things, advised the sector regulators on how to handle the leniency aspects of their cases and on the scope and process for obtaining Competition Disqualification Orders as well as on various substantive issues, including assisting with the development of theories of harm. The CMA has provided procedural advice to Ofwat in relation to its monitoring of Competition Act 1998 commitments it has with Bristol Water and the point at which it might be appropriate for these to be released.

### ***Support on markets work***

213. During this period, the FCA and Ofgem have continued to provide assistance in implementing the remedies from the Retail Banking, Investment Consultants and Energy market investigations<sup>131</sup> while the CMA has provided ORR with advice on its approach to remedies in relation to its market study into ATGs and TVMs, and advice on what action the CMA may take in response to a market investigation reference.

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<sup>131</sup> For more detailed information on these market investigations, see paragraphs 64 to 84.

## ***Support on mergers work***

214. Of particular note this year was the joint work carried out by the CMA and ORR on the UK's response to the proposed merger of Siemens and Alstom, both significant participants in key rail supply chains. The CMA and ORR made a joint submission on the impact of the merger on competition in the UK, and ORR made a series of further submissions, with the CMA facilitating ORR's engagement with the European Commission.<sup>132</sup> These representations drew on data available to ORR via its market intelligence function, significant stakeholder engagement, and the advice of ORR's operations experts. The European Commission prohibited the merger in February 2019.<sup>133</sup>
215. In addition to the above, the CMA received valuable input and support from the regulators when investigating mergers involving the regulated sectors. Reviewing mergers is an important function performed by the CMA as the national competition authority and although mergers do not fall within the scope of concurrency, many involve the regulated sectors.

## ***Airport Services***

216. The CAA assisted the CMA with its investigation of the completed acquisition by Menzies Aviation (UK) Limited of part of the business of Airline Services Limited<sup>134</sup> and its investigation of the long term wet lease arrangement entered into between Aer Lingus Limited and Cityjet Designated Activity Company.<sup>135</sup>

## ***Communications***

217. The CMA received assistance from Ofcom in relation to nine mergers,<sup>136</sup> including the public interest review of the completed

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<sup>132</sup> ORR, [Siemens/Alstom \(M.8677\): ORR representations to the European Commission – Phase 1](#), July 2018.

<sup>133</sup> European Commission, [Commission prohibits Siemens' proposed acquisition of Alstom](#), February 2019.

<sup>134</sup> [Menzies Aviation \(UK\) Limited / Airline Services Limited merger inquiry](#).

<sup>135</sup> [Aer Lingus Limited / Cityjet Designated Activity Company merger inquiry](#).

<sup>136</sup> Two of these cases (21<sup>st</sup> Century Fox / Sky and Hytera / Sepura) were listed in our Concurrency Report of 2018.

acquisition by Trinity Mirror plc (now Reach plc) of certain assets of Northern & Shell Media Group, following a referral the Secretary of State for Digital, Culture, Media and Sport<sup>137</sup> and the review of the anticipated acquisition by Moneysupermarket.com Financial Group Limited of Decision Technologies Limited.<sup>138</sup>

### *Energy*

218. Ofgem provided extensive assistance and advice as well as sector-specific expertise in the CMA's analysis of four merger cases. In each case, Ofgem provided its sectoral experience and views on the transaction. For example, in October 2018, the CMA cleared the proposed merger between SSE Retail and npower, following an in-depth Phase 2 merger investigation. As the relevant sector regulator, Ofgem assisted the CMA in understanding the market, including by providing extensive information to help the CMA complete its analysis, and also its views on the expected impact of the merger on competition in the retail energy market.

### *Financial services/payment services*

219. The CMA reviewed 12 mergers involving financial services and payment systems with assistance from the FCA and PSR during the relevant reporting period. For example, the CMA benefitted from the FCA's and PSR's sector and regulatory knowledge during the CMA's Phase 2 investigations into the acquisition by Experian of ClearScore<sup>139</sup> (FCA) and the takeover by PayPal of iZettle<sup>140</sup> (PSR and FCA).

### *Healthcare*

220. NHS Improvement has continued to work closely with the CMA to support its assessment of NHS mergers. This has included on-going

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<sup>137</sup> [Trinity Mirror / Northern & Shell Media Group merger inquiry.](#)

<sup>138</sup> [Moneysupermarket.com Financial Group Limited / Decision Technologies Limited merger inquiry.](#)

<sup>139</sup> [Experian Limited / Credit Laser Holdings merger inquiry.](#)

<sup>140</sup> [PayPal Holdings, Inc / iZettle AB merger inquiry \(ongoing\).](#)

work over the year to help the CMA prioritise which NHS mergers should be reviewed.

### *Rail Services*

221. The CMA completed a Phase 1 review of the acquisition by FirstGroup plc and MTR Corporation of the South Western rail franchise during the period of this report, which involved cooperation with ORR.<sup>141</sup>

### *Water and sewerage services in England and Wales*

222. The CMA completed its assessment of two mergers, the joint venture between South Staffordshire Water Plc and South West Water Limited<sup>142</sup> and the merger involving Castle Water Holdings Limited and Invicta Water Limited.<sup>143</sup> The investigation involved significant cooperation between the CMA and Ofwat, which allowed both cases to be considered within the statutory deadline of Phase 1.

## **Competition and Regulatory Networks**

### ***UKCN***

223. The mission of the UKCN is to promote competition for the benefit of consumers and to prevent anti-competitive behaviour, both through facilitating the use of competition powers and the development of pro-competitive regulatory frameworks, and through the sharing of best practice and knowledge. The UKCN has continued to work effectively throughout the period of this report. As in previous years, there have been regular meetings of the UKCN Chief Executives as well as of senior director and working level officials.

224. During this reporting period, for example, regulators such as Ofgem and the FCA have given presentations on their recent experience in using section 26A interview powers, as well as dealing with procedural

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<sup>141</sup> [FirstGroup and MTR / South Western rail franchise merger inquiry.](#)

<sup>142</sup> [South Staffordshire Water / South West Water Merger inquiry.](#)

<sup>143</sup> [Castle Water Holdings / Invicta Water Limited.](#)



challenges to the Procedural Officer. Others, such as Ofcom and ORR, have presented on their investigations and findings against Royal Mail, and in its ATG and TVM market study respectively.

225. The CMA and the sector regulators have also engaged in regular discussions on substantive and procedural know-how and other policy developments. For example, the UKCN has held discussions about the updates to the CMA's revised Guidance on its investigation procedures in Competition Act 1998 cases,<sup>144</sup> as well as on the Law Commission's consultation on warrant powers<sup>145</sup> and has shared practical tips on how to scope a market investigation reference. The CMA has also used the UKCN meetings as a forum for providing regular updates on preparations for EU exit and has invited relevant government departments to brief the regulators (see further paragraphs 247 to 250 below).

### ***Scottish Competition Network***

226. ORR played a key role in establishing a Scottish Competition Network which brings together competition policy representatives from the regulators based in Scotland.<sup>146</sup> The first meeting was held in January 2019.
227. The aim of the group is to discuss topics in competition policy, and any current competition policy issues. The group will also provide opportunities for networking. The group will regularly liaise with the UKCN and the CMA.

### ***UKRN***

228. As reported in the last two Annual Concurrency Reports, the UKCN and UKRN have taken steps to ensure greater coordination between them. This continues to be the case with joint meetings between the UKCN and UKRN Chief Executives and regular meetings between the CMA's Sector Regulation Unit<sup>147</sup> and the UKRN's Director to identify issues of

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<sup>144</sup> [CMA8: Guidance on the CMA's investigation procedures in Competition Act 1998 cases](#), January 2019.

<sup>145</sup> To see the progress of the consultation please see [the Law Commission page](#).

<sup>146</sup> Current members include ORR, Bank of England, OFCOM, OFGEM, CMA and the FCA.

<sup>147</sup> The Sector Regulation Unit exists within the CMA to facilitate day-to-day contact with the sector regulators, co-ordinate the UKCN and undertake policy work aimed at achieving more competitive outcomes for consumers within the regulated sectors.

common interest and to ensure that unnecessary duplication can be avoided.

229. In addition, the CMA has participated in the UKRN's networks where relevant to the CMA's work. For example, the CMA attends the UKRN's DCTs network which has played an important role in taking forward the recommendations that were addressed to all the regulators. Similarly, the CMA is working with the UKRN's vulnerability network (see further paragraph 234 below).

### ***Projects within the competition networks***

#### *Regular bilateral meetings*

230. Alongside the interactions taking place in the context of the UKCN, bilateral meetings are held on a quarterly basis at working level between the CMA's Sector Regulation Unit and each sector regulator. These meetings facilitate the effective enforcement of competition law through the sharing of expertise, information, ideas and experience in relation to specific cases as well as discussion of other projects to promote competition. In addition, there are meetings at Chair and Chief Executive level as well as at senior director level between the CMA and each sector regulator and also ad hoc contacts as the need arises, for example, during this period on the loyalty penalty super-complaint.

#### *Case Decision Groups working group*

231. As reported in the 2018 Annual Concurrency Report, a working group has been set up to share know-how and best practice for the use of Case Decision Groups (CDGs) in Competition Act 1998 cases and to consider the merits of developing some best practice principles aimed at ensuring effective and efficient enforcement. Three meetings of the working group (co-chaired by Professor Philip Marsden<sup>148</sup> and Carole Begent, General Counsel and Head of Regulatory and Competition Enforcement at the PSR) have taken place to date and have covered topics such as the composition of CDGs, the interaction between CDGs and case teams and the handling of Oral Hearings.

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<sup>148</sup> Philip Marsden was Senior Director for Case Decision Groups at the CMA until September 2018.

### *UKCN consumer remedies project*

232. The UKCN consumer remedies project arose following a recommendation from the National Audit Office that the CMA and the sector regulators should '[d]evelop further their understanding of consumer behaviour to inform proposed remedies'. It was launched in June 2016 and concluded with an end-of-project conference in October 2018.<sup>149</sup> The project enabled regulators and the CMA to learn from each other and external experts.
233. The project resulted in the creation of a knowledge bank, constituting an archive of academic and policy documents relevant to the design, implementation and testing of consumer-facing remedies. There were also five workshops (co-chaired by the CMA and the FCA) on diverse topics regarding consumer-facing remedies, including the linkages between customer behaviour and remedies; enhancing the impact of consumer remedies through research; how to design, select and test remedies in a practical context; learning from and collaborating with the private sector; and designing remedies that work for vulnerable consumers. The CMA and FCA also spoke at the OECD (Organisation for Economic Co-operation and Development) in June 2018 on the practical challenges of considering non-price effects. The CMA held an impactful conference, with cross-regulator and cross-industry attendance in October 2018. A final report for the project was published in conjunction with the conference, and the paper won an award at the Antitrust Writing Awards.<sup>150</sup>

### *Vulnerable consumers*

234. In July 2018, the CMA launched its work programme to explore consumer vulnerability and inform its priorities, analysis and design and implementation of remedies. This includes both market-specific aspects of vulnerability, which potentially affect a wide range of consumers, and the challenges faced by certain groups of vulnerable consumers such

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<sup>149</sup> FCA/CMA, [Helping people get a better deal: Learning lessons about consumer facing remedies](#), October 2018.

<sup>150</sup> OECD, [Roundtable on consumer-facing remedies](#), June 2018; [DAF/COMP/WP3\(2018\)2, Designing and Testing Effective Consumer-facing Remedies - Background Note](#), May 2018.

as those on low incomes and the elderly. The work involved wide-ranging research and stakeholder engagement to understand consumer vulnerability across markets and involved extensive engagement with the regulators, particularly at a number of symposiums and roundtables that were hosted by the CMA as well as the NIAUR.<sup>151</sup>

235. In February 2019, the CMA published its key findings from this programme of work.<sup>152</sup> The publication considers what the CMA means by consumer vulnerability, research and discussions to identify the challenges faced by different types of vulnerable consumers in engaging with markets, evidence on market outcomes, and what can be done to help overcome these challenges.
236. The CMA has also been proactively involved in the UKRN vulnerability network which plays an important role in co-ordinating a shared response on vulnerability on behalf of the regulatory community.

## **Sharing of procedural and substantive knowhow**

### ***UKCN workshop on access to file***

237. In December 2018, the CMA hosted a workshop on access to file to share best practice on the approach and procedures used by the CMA in the exercise of its investigation and enforcement powers under the Competition Act 1998. The workshop was held to ensure that the CMA and the sector regulators understood the rationale for and the mechanics of the CMA's approach.<sup>153</sup>

### ***Good practice in design and presentation of survey evidence in merger cases***

238. The CMA shared with the regulators its 'Good Practice in the Design and Presentation of Customer Survey evidence in Merger cases' which had been published in May 2018.

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<sup>151</sup> CMA, [Vulnerable consumers](#).

<sup>152</sup> CMA, [Consumer vulnerability: challenges and potential solutions](#), February 2019.

<sup>153</sup> CMA, [CMA8: Guidance on the CMA's investigation procedures in Competition Act 1998 cases](#), January 2019.

### ***Competition Disqualification Orders (CDO) guidance***

239. As noted above, the CMA has presented to the UKCN on the process for obtaining CDOs as well as providing guidance on a bilateral basis to assist the regulators consider the scope for CDOs in their own Competition Act 1998 cases and to advise them on how to pursue them. In addition, the CMA briefed the regulators on its proposals for amending the CMA's guidance on CDOs. The revised guidance was published in February 2019 following consultation. The CMA has offered its help in the application of the new guidance.

### ***Competition awareness training***

240. The CMA and regulators regularly undertake staff development training to help ensure their staff are aware of the latest developments in competition law. Training is regularly shared between the CMA and the regulator. For example, regulators are invited to participate in CMA Academy training and to attend events hosted by the CMA, while regulators host training to which other regulators are invited (such as a presentation from the ORR on its recent market study and from Ofcom on its postal services case).

### ***Support on policy work***

241. There is close and ongoing mutual support between the CMA and sector regulators on policy work in the UKCN and on a bilateral basis. This has included sharing of expertise, as well as discussion of approaches to competition issues in the various sectors. Some examples are set out in the following paragraphs.

#### ***Rail policy project***

242. The CMA continues to ensure that the recommendations of the rail policy project are delivered by ORR and Department for Transport (DfT) through a cross-government working group, which also involves BEIS and HM Treasury. The DfT has published the response to its consultation<sup>154</sup> on the objectives and high-level options for a public services obligation levy that will help secure funding for unprofitable but socially valuable rail services once greater competition is introduced

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<sup>154</sup> DfT, [Consultation outcome: The passenger rail service obligation levy](#), April 2018.

and will consult in more detail later in the year. ORR has ongoing work streams in relation to reforming track access charges and improving the system operator function at Network Rail and has launched a consultation on implementing these changes. HM Treasury and BEIS are supporting this initiative.

### *Future aviation strategy*

243. The CMA is advising the DfT on competition aspects of its future aviation strategy, including options for allocating slots at airports. The CMA is also examining consumer protections, airline competition, DCTs in aviation and airport car parking. In December 2018, the DfT published its consultation on its green paper which outlines proposals for a new aviation strategy. The strategy will set out the challenges and opportunities for aviation to 2050 and beyond and will emphasise the significance of aviation to the UK economy and regional growth. The DfT will publish its final aviation strategy in 2019.<sup>155</sup>

### *NIAUR enforcement policy*

244. Ofgem engaged in a number of discussions with counterparts at the NIAUR to provide insights into their experience of regulatory enforcement. These insights helped shape the development of the NIAUR's new enforcement policy which was published in August 2018.<sup>156</sup>

### **Secondments**

245. Secondments continue to be an important means of sharing and transferring skills, expertise and resource between the CMA and the regulators. The CMA and the regulators have continued to arrange a variety of secondments for a range of purposes, in line with the secondment principles agreed by the UKCN in 2017,<sup>157</sup> ensuring that regulators and the CMA have access to a broad range of skills and expertise as appropriate to assist in their competition work.

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<sup>155</sup> DfT, [Open consultation: Aviation 2050 – the future of UK aviation](#), December 2018.

<sup>156</sup> NIAUR, [Approach to enforcement: Decision on revising our enforcement procedure and financial penalties policy](#), June 2018.

<sup>157</sup> CMA, [UKCN secondment principles](#), March 2017.

246. These secondment arrangements are arranged on a variety of different bases. Some illustrative examples where they have been arranged include the secondment of staff from the CAA to the CMA to assist with the CMA's airport services cases and the provision of economic support by the CMA to Ofgem to assist with its investigation into a potential breach of Chapter II of the Competition Act 1998 and Article 102 of the Treaty on the Functioning of the EU. Similarly, a staff secondment from the FCA to the PSR was arranged from summer 2018 to February 2019 to assist the PSR's ongoing Competition Act 1998 investigation. Secondments have also taken place for the purposes of other competition projects. For example, they have been particularly useful during the CMA's preparation of its response to the super-complaint from Citizens Advice into loyalty penalties across various regulated markets.

### **Preparations for EU exit**

247. The CMA has continued to prepare for the changes to the competition regime and the impact on concurrency of the UK's exit from the EU throughout 2018/19. The key focus has been to ensure that the competition and concurrency regime remains resilient and effective on Exit Day in any scenario.
248. Preparations for EU exit have regularly been discussed at the UKCN and bilateral meetings, as well as more informally on a bilateral basis. The CMA has kept the regulators updated on various EU exit developments, such as the withdrawal agreement, its interactions with government on cross-cutting issues and readiness preparation for EU exit. More specifically, the CMA has liaised with regulators to seek their input on legal changes and draft guidance such as the guidance it has prepared on CMA functions in the event of a 'no deal' EU exit. In addition, the CMA has worked with the regulators on the drafting of the Competition (Amendment etc.) (EU Exit) Regulations 2019 made on 22 January 2019, which corrects deficiencies in competition legislation arising from EU exit.
249. These channels of communications have been useful in helping to update the regulators on policy changes arising from EU exit, as well as for regulators to input on changes to regulations and guidance that affects the competition and concurrency regime. Regulators have also undertaken their own preparations to deal with sector-specific issues arising from EU exit.

250. The CMA has a formal role in advising government and has been engaging with government about legislative requirements for the competition regime after EU Exit and on arrangements during any post-exit implementation period. During the last year the CMA has engaged extensively with the Department for Business, Energy and Industrial Strategy, and the Department for International Trade, in combination with input from concurrent regulators, on how to maintain existing – and forge new, strong, mutually beneficial and cooperative – relationships with other agencies, including the European Commission. These efforts have been made specifically with a view to promote effective and consistent competition law and policy overseas for the benefit of UK consumers.