

Annual report on concurrency

2020

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Introduction

1. This is the sixth annual concurrency report to be published by the Competition and Markets Authority (CMA) in accordance with its statutory obligation¹ to assess the operation of the concurrency arrangements which came into effect on 1 April 2014.² Under these arrangements, competition law is applied in the regulated sectors not only by the CMA, the UK's primary competition authority, but also by the relevant sector regulators.

Table 1: Sector regulators and their responsibilities

Civil Aviation Authority (CAA)	Airport operation and air traffic services
Office of Communications (Ofcom)	Broadcasting, electronic communications and postal services
Gas and Electricity Markets Authority (Ofgem)	Electricity and gas in Great Britain
Financial Conduct Authority (FCA)¹	Financial services ³
Payment Systems Regulator (PSR)	Payment systems
NHS Improvement (NHSI)¹	Healthcare services in England
Office of Rail and Road (ORR)	Railway services
Water Services Regulation Authority (Ofwat)	Water and sewerage services in England and Wales
Northern Ireland Authority for Utility Regulation (NIAUR)	Electricity, gas, water and sewerage services in Northern Ireland

2. 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, with a view to achieving more competitive outcomes for consumers. These sectors account for an estimated 25% of GDP and almost every household and business in the UK relies on their services which range from basic utilities like heat, light and water to financial services such as banking and insurance.

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

² 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.

³ As of 1 April 2019, the FCA also has concurrent competition powers in relation to the provision of claims management services in Great Britain.

3. Like the CMA, the sector regulators can, in the sectors for which they are responsible:
 - (a) apply the UK and EU law prohibitions on undertakings engaging in anticompetitive agreements or on the abuse of a dominant market position.⁴ Following the withdrawal of the UK from the EU on 31 January 2020, these EU law prohibitions will continue to apply during the transition period;⁵ 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.⁶
4. The concurrency arrangements provide for cooperation between the CMA and the sector regulators in relation to their concurrent powers.
5. This report covers the period from 1 April 2019 to 31 March 2020. The first part of the report sets out the competition enforcement work that has been undertaken in the regulated sectors during this period, while the second part outlines the markets work that has been carried out. The report then provides an overview of the wider cooperation between the CMA and the sector regulators.
6. Overall, there has been continued progress in competition enforcement. In addition to a number of new cases having been launched in the relevant reporting period, there has been good progress on case delivery as two cases have been closed with infringement decisions and one with a set of commitments. This means that over the last two years, five cases have resulted in infringement decisions. As noted in last year's Annual Concurrency Report, this is significant because prior to then there had only been two infringement decisions since the start of the concurrency regime in April 2014.⁷ More particularly:
 - At the start of this period, there were investigations ongoing by Ofcom in the electronic communications and postal services sectors, while Ofgem had cases open involving the electricity and gas sectors. The FCA and the CMA were both working on cases in the financial services sector and the PSR was progressing its investigation into payment systems. In terms of the cases that have been closed during the course of the period, both

⁴ 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 \(TFEU\)](#).

⁵ By virtue of Clause 1 of the European Union (Withdrawal Agreement) Act 2020. See also CMA113, [Guidance on the functions of the CMA under the Withdrawal Agreement](#), paragraph 4.

⁶ The market investigation provisions are set out in Part 4 of the [Enterprise Act 2002](#).

⁷ CMA, [Annual Concurrency Report 2019](#), paragraph 9.

Ofcom and Ofgem have issued infringement decisions, while Ofgem has accepted commitments in one of its cases.

- There have been three new cases that the regulators and the CMA have launched involving a range of regulated sectors. Ofcom opened a new investigation relating to the postal services sector. A case was also opened in the water and sewerage services sector by Ofwat, while the CMA launched an investigation into healthcare services in England.

7. In addition, both the CMA and regulators have carried out important markets work. In January 2020, the ORR opened a market study into the supply of signalling systems. This market study builds on ORR's recent work in relation to the proposed merger of Siemens/Alstom, which was blocked by the European Commission in February 2019.⁸ Other sector regulators have used their sector-specific powers to carry out a range of market studies and reviews.
8. The CMA and the regulators have continued to work together, not only with respect to their concurrent powers and the cooperation that forms part of those arrangements, but also in relation to all the competition and regulatory tools available to promote and protect competition in the regulated sectors. They have also worked together on matters relating to the UK's withdrawal from the EU. In addition, the regulators have continued to provide the CMA with technical expertise and advice on mergers involving companies in the sectors they regulate.
9. Following its recent review of the UK competition regime,⁹ the Department for Business, Energy and Industrial Strategy (BEIS) concluded that the enhanced concurrency arrangements introduced in 2014 *'have worked in enabling regulators to focus on competition outcomes in their sectors. The improved mechanisms for institutional co-operation have been well received.'*¹⁰
10. However, BEIS expressed some concern over the number of enforcement cases launched and infringement decisions issued by the sector regulators. This is so even though when the reforms to the concurrency regime were being debated, the government acknowledged that there was unlikely to be a large increase in caseload as a result of the enhanced concurrency arrangements.¹¹ Nonetheless,

⁸ Following the end of the reporting period, but prior to publication of this Report, the ORR published its decision to close the market study. The decision was taken given the impact of the current COVID-19 circumstances. For more information see ORR, [market study into the supply of signalling systems](#), April 2020.

⁹ BEIS, [Competition law review: post implementation review of statutory changes in the Enterprise and Regulatory Reform Act 2013](#), July 2019 ('Competition law review').

¹⁰ BEIS, Competition law review, page 56.

¹¹ See Department for Business, Innovation & Skills (BIS), [Growth, competition and the competition regime: Government response to consultation](#), March 2012. BIS noted that *'while there is unlikely to be a large increase in*

BEIS's comments were made in the context of more general questions that it has raised about the effectiveness of the overall competition enforcement regime in the UK, highlighting in particular the volume of cases launched by both the CMA and regulators and the length of time taken to conclude investigations, which could have an impact on deterrence.

11. The CMA's Chairman, Lord Tyrie, wrote to the then Secretary of State, Greg Clark, in February 2019 outlining a range of proposals for the reform of the UK's competition and consumer protection regime, in particular to make the running of competition enforcement cases more streamlined and effective.¹² The CMA has worked with officials at BEIS to develop these proposals in further detail.
12. If implemented, the proposals would deal with some of the concerns set out by BEIS in its competition law review, ensuring that the CMA is better equipped to respond to a range of challenges, including those related to the growth of the digital economy.
13. Some of these changes could be implemented at a regime-wide level (as opposed to changes falling only on the CMA). Therefore, it is expected that they would enhance the ability of the sector regulators to carry out their competition work and increase the effectiveness of competition enforcement in the regulated sectors. The CMA also expects that improvements in respect of interim measures in the competition and markets regimes would benefit sector regulators as well as the CMA.
14. Accordingly, the CMA has engaged with the regulators on the proposals for reform. As well as bilateral discussions, this has included roundtable discussions through the UK Competition Network (UKCN) and the UK Regulators Network (UKRN). The CMA expects to continue these discussions in the coming year, alongside continuing work with BEIS in respect of preparations for consultation on the proposals.
15. At the end of this reporting period, the CMA and the regulators were faced with responding to the COVID-19 situation. This report does not set out details of those responses.¹³ COVID-19 will challenge the way regulators work and the prioritisation choices they make at the end of this reporting period and potentially deep into the next. The relationships established between the CMA and the regulators under the concurrency arrangements will facilitate the sharing of

number of cases because of a change to the form of primacy, the Government expects there might be some increase over time, especially when taken together with the other concurrency and wider reforms proposed' (paragraph 8.18).

¹² [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.

¹³ However, further information is available on the CMA and regulators' respective websites.

knowledge and information in order to assess the impact of the developing COVID-19 situation on competition.

Competition enforcement in the regulated sectors

16. This section of the report sets out the competition enforcement work that has been carried out by the CMA and the regulators during the current reporting period. It also highlights the use they have made of the softer enforcement tools, such as advisory and warning letters.

Competition prohibitions

Table 2: Use of powers by the CMA and sector regulators under the Chapter I and Chapter II prohibitions in the Competition Act 1998 (or relevant EU prohibition) for the year 1 April 2019 to 31 March 2020

	<i>Total</i>
Number of cases ongoing at start of reporting period	9
Number of new complaints ¹⁴	14
Number of investigations formally launched	3
Number of those cases in the year to date in which:	
- information gathering powers and powers to enter premises/conduct dawn raids were used	8
- a Statement of Objections was issued	2
Number of those cases in the year to date that resulted in:	
- an infringement decision	2
- the giving of commitments	1
- 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	
Decisions taken to use direct regulatory powers instead of competition prohibition powers where those competition prohibition powers could have been exercised	

17. At the start of the reporting period, there were nine open cases in the regulated sectors:

¹⁴ 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.

- (a) Ofcom had two open investigations, one relating to the retail supply of express parcel delivery services, and the other, the provision of equipment and related services in the electronic communications sector. The first case was settled, while the second is currently ongoing.
 - (b) Ofgem had three open investigations. The first, which concerned the supply of gas and electricity to domestic customers, was closed with the issuing of an infringement decision. The second, relating to the provision of services to the energy industry, is currently ongoing. The third, which related to wholesale trading activities, was closed through the acceptance of commitments.
 - (c) There were three investigations open in the financial services sector. The FCA conducted one, with the CMA conducting the other two.
 - (d) The PSR had one open investigation into payment systems, which is ongoing.
18. Three new investigations were launched in the regulated sectors this year:
- (a) Ofcom opened an investigation in relation to the parcel delivery sector.
 - (b) Ofwat launched an investigation into activities impacting on the market for data logging services and the business retail market for water and sewerage services.
 - (c) The CMA launched an investigation into the healthcare services in England.
19. Further details on the cases listed in paragraphs 17 and 18 above are included in the section below. As some of the investigations are currently ongoing, the information disclosed is limited to what is publicly available but relevant updates have been provided where possible.

Communications

Chapter I/Article 101 investigation into the retail supply of express parcel delivery services to business customers based in the United Kingdom

20. In November 2019, Ofcom issued its decision finding that Royal Mail Group Limited (Royal Mail) and The Salegroup Limited (TSG) had infringed competition law by participating in a customer allocation agreement in the market for the

retail supply of express parcel delivery services to business customers based in the UK.¹⁵

21. Both parties had agreed not to offer or supply parcel delivery services to each other's customers, which were mainly small and medium sized businesses. Ofcom found that the parties proactively implemented, monitored and enforced that agreement between August 2013 and May 2018.¹⁶
22. TSG was fined £40,000 following its decision to settle the case. Royal Mail was granted immunity under the CMA's leniency policy and, given its cooperation during the investigation, it was not fined.

Chapter I/Article 101 investigation into the provision of equipment and related services in the electronic communications sector in the United Kingdom

23. In June 2019, Ofcom launched an investigation into the suspected sharing of commercially sensitive information, including information on future pricing, between competitors in the provision of equipment and related services in the electronic communications sector in the UK.¹⁷ Ofcom has used its formal information gathering powers to obtain evidence and the investigation is currently ongoing.

Chapter I/Article 101 investigation into the parcel delivery sector

24. In November 2019, Ofcom launched an investigation into suspected agreements between providers of parcel delivery and pick-up services setting minimum prices and imposing online sales restrictions.¹⁸ Ofcom has used its formal information gathering powers to obtain evidence and the investigation is currently ongoing.

Energy

Chapter I investigation into the supply of gas and electricity to domestic customers in Great Britain

25. In May 2019, Ofgem issued a decision, finding that Economy Energy, E (Gas and Electricity) and Dyball Associates had infringed competition law by entering

¹⁵ The investigation was launched in August 2018.

¹⁶ Ofcom, [Competition Act investigation regarding business parcel delivery services](#), August 2018.

¹⁷ Ofcom, [Competition Act investigation regarding the provision of equipment and related services in the electronic communication sector](#), June 2019. Although the case was launched during this reporting period, it was opened in March 2019 and therefore included as a new case in the 2019 Annual Concurrency Report.

¹⁸ Ofcom, [Competition Investigation regarding parcel delivery and pick-up services](#), November 2019.

into an anti-competitive arrangement to share markets in relation to the supply of gas and electricity to domestic customers in Great Britain.

26. The parties agreed that neither Economy Energy and E (Gas and Electricity), nor their sales agents, would actively target customers already supplied with gas and/or electricity by the other (but each other's existing customers would be allowed to switch between the two businesses if they pro-actively sought to do so). The agreement was supported by the parties sharing commercially sensitive and strategic information relating to their customers. Ofgem found that the infringement existed from, at the latest, January 2016 until, at the earliest, the date of Ofgem's first investigatory steps in September 2016.
27. Dyball Associates was found to have acted as a facilitator, by designing, implementing and maintaining software systems that prevented customers from switching and enabled the sharing of customer lists between Economy Energy and E (Gas and Electricity). Ofgem found that Dyball Associates was aware of the actual conduct planned and/or put into effect by the other parties in order to share markets and/or allocate customers.
28. Ofgem fined the parties a total of £870,000¹⁹ and directed them not to enter into the same or similar arrangements in the future.

Chapter II/Article 102 investigation into an undertaking providing services to the energy industry

29. Ofgem continued its investigation into an alleged abuse of a dominant position by a company providing services to the energy industry in Great Britain.²⁰ During the past year Ofgem has continued to assess the evidence collected during the course of the investigation, particularly taking into account recent developments in the market.

Chapter II/Article 102 investigation into wholesale trading activities

30. Ofgem accepted binding commitments from EPEX Spot SE (EPEX) and its parent company, European Energy Exchange (EEX), in its investigation into a potential infringement involving an abuse of a dominant position in relation to wholesale trading activities.²¹

¹⁹ Ofgem fined E (Gas and Electricity) £650,000 and Economy Energy £200,000 (the latter fine reflecting Economy Energy's financial position, including that it is in administration).

²⁰ The investigation was launched in August 2017.

²¹ The investigation was launched in December 2018.

31. The case related to the market coupling between Great Britain and the Island of Ireland and focused on the provision of intraday electricity trading services. Market coupling had been implemented in relation to the day ahead electricity auctions between Great Britain and the Island of Ireland. EPEX was responsible for implementing the two intraday auctions and delivering arrangements that would support participation of more than one power exchanges in the intraday auction.
32. EPEX was suspected of abusing its dominant position in the market for the provision of the cross-border intraday electricity trading platform and related services (such as clearing and settlement) between Great Britain and the Island of Ireland. By failing to take the steps necessary to allow other power exchanges to access the intraday auctions between Great Britain and the Single Electricity Market,²² Ofgem considered that EPEX's alleged conduct was likely to have the effect of hindering the maintenance or growth of effective competition in the market. This is because the result of EPEX's actions was to prevent its rivals from entering that market – i.e. other power exchanges were denied access to an essential facility required to offer the Great Britain-Single Electricity Market coupled intraday auctions via their trading platforms.
33. Ofgem accepted binding commitments from EPEX and its parent company six months after launch and the investigation was closed.
34. The commitments set out the following main obligations that: (i) EPEX and its parent company, EEX, would do everything within their control to ensure that access to the auctions was provided to other power exchanges (defined as Go Live) by 23 July 2019; (ii) EPEX would report on progress against the agreed milestones for a period lasting until three months after Go Live; and (iii) EPEX would create and deliver compliance training and review its competition law compliance procedures. To ensure the target date was met, the project was identified as a top priority within all relevant EEX, sister and parent companies' project management committees. The commitments have since been fully implemented.

Financial services

35. As reported last year, investigations in the financial services sector have been undertaken by both the FCA and the CMA. The FCA's investigation is set out below followed by the CMA's two investigations.

²² This refers to the all-island wholesale electricity market.

Chapter I/Article 101 investigation into financial services

36. During the period of this report, the FCA has continued to progress its existing investigation into suspected anti-competitive agreements. It opened the investigation in March 2019 and has been gathering evidence using its formal information-gathering powers.

Chapter I/Article 101 investigation into the use of certain retail most favoured nation clauses by a price comparison website in relation to home insurance products

37. In September 2017, the CMA launched an investigation into suspected competition law breaches involving the use, since 2012, of retail most favoured nation clauses in certain agreements between BISL Ltd (trading as comparethemarket.com or comparethemeerkat.com) and home insurance providers.²³ The investigation followed on from the CMA's market study into digital comparison tools.
38. The CMA issued a Statement of Objections in November 2018 to BGL (Holdings) Limited, BGL Group Limited, BISL Limited (BISL), and Compare The Market Limited (together BGL). Following receipt of BGL's written and oral representations in response to the Statement of Objections, the CMA has conducted further evidence gathering and carried out a further review of the evidence on the case file.
39. A final decision on the case (whether finding an infringement or closing the case) will be made in spring 2020.

Chapter I/Article 101 investigation into financial services

40. The CMA is continuing to progress an investigation into suspected anti-competitive arrangements in the financial services sector, which was opened in 2018.

Payment systems

Chapter I/Article 101 investigation into payment systems

41. The PSR's ongoing investigation under the Competition Act 1998 was first reported in the 2018 Annual Concurrency Report. This is the PSR's first case and relates to the market for payment systems. In the period covered by this

²³ 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.

report, the PSR used its formal information gathering powers to gather further evidence as part of its investigation.

Healthcare services in England

Chapter I investigation into the private healthcare sector

42. In July 2019, the CMA launched an investigation into suspected anti-competitive arrangements in the private healthcare sector.

Water and sewerage services

Chapter II investigation into the business retail market for water and sewage services and associated markets for value added services

43. In June 2019, Ofwat launched an investigation into a potential abuse of a dominant position by Thames Water. In particular, Ofwat suspects that Thames Water's approach to installing digital smart meters, which affects providers of data logging services and their customers, may be anti-competitive.²⁴
44. Ofwat is also investigating the accuracy of customer data that Thames Water shared with retailers at the time the business retail market was opened up to competition and the fairness of certain credit terms that it applies to retailers.
45. During the period of this report, Ofwat has gathered evidence using its formal information gathering powers and the investigation is currently ongoing.

Other relevant competition enforcement work

Railway services

Chapter II/Article 102 investigation into Freightliner Limited

46. The ORR reviewed the commitments that Freightliner Limited had offered in 2016 to address the ORR's concerns that certain arrangements (including long-term contracts, exclusivity clauses and resale restrictions) between Freightliner Limited and its customers might have limited the ability of its competitors to win business.²⁵ By April 2019, the commitments had been in place for three years.

²⁴ This investigation was launched in June 2019.

²⁵ The case had originated from a complaint that the ORR received in 2013.

47. In June 2019, having completed its review, the ORR found no grounds to re-open the investigation: it found positive developments both with respect to the conduct of Freightliner Limited and the wider market. In particular, the ORR found that the competitors of Freightliner Limited were increasingly competing, and winning, customers on key routes.

Cases appealed to the Competition Appeal Tribunal

48. In August 2018, Ofcom published its decision that Royal Mail had infringed the Chapter II prohibition and Article 102. Ofcom found that Royal Mail had abused its dominant position in the market for bulk mail delivery services in the UK by introducing discriminatory pricing. Specifically, Ofcom found that lower prices for wholesale bulk access were not available to access operators that operated their own delivery services.
49. In October 2018, Royal Mail appealed Ofcom's decision to the Competition Appeal Tribunal (CAT). The CAT dismissed Royal Mail's appeal against Ofcom's infringement decision in November 2019. The CAT upheld Ofcom's decision on all grounds, including the financial penalty.²⁶ Royal Mail has sought permission to appeal the judgment in the Court of Appeal.

Use of advisory/warning letters

50. The CMA and regulators can issue advisory and warning letters in situations where there are concerns that certain practices may be restricting competition but for which a formal investigation has not been launched. Both advisory and warning letters are softer enforcement tools that are designed to increase awareness of competition law and encourage compliance.
51. During the period covered by this report, the ORR issued one warning letter in the passenger rail transport market in response to a complaint from a member of the public and one advisory letter regarding the rail retail market. Ofwat issued three advisory letters to incumbent water companies highlighting potential competition concerns.²⁷ For example, one of Ofwat's letters was a response to a series of complaints that a number of the incumbent undertakings were making it difficult for self-lay providers to compete and operate efficiently in this market.

²⁶ *Royal Mail PLC v Office of Communications and Whistl UK Limited* [2019] CAT 27.

²⁷ Ofwat, [Letter to incumbent water companies regarding the self-lay market for new connections](#), April 2019; Ofwat, [Letter to incumbent water companies regarding the development of effective markets](#), May 2019; Ofwat, [Follow-up letter to incumbent companies regarding the development of effective markets](#), September 2019.

Decisions taken since April 2019 to use direct regulatory powers instead of competition prohibition powers

52. Under Schedule 4 to the Enterprise and Regulatory Reform Act 2013, the CMA has a duty to report 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 2019, there has been no such occasion.
53. In addition, the sectoral regulators 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 1998.²⁸
54. Ofwat indicated that during the current reporting period there were two occasions when it exercised its sectoral enforcement powers,²⁹ and where it had a duty to consider whether it would be more appropriate to proceed under competition powers. In October 2019, Ofwat took enforcement action against Southern Water Services Limited. Ofwat decided it was not appropriate to proceed under the Competition Act 1998 as the issues concerned Southern Water's management of its statutory and licence obligations rather than market-related issues.
55. In addition, Ofwat consulted on the enforcement action it proposed to take against Tor Water Limited following a series of breaches of the retailer's licence obligations, including the failure to make timely payment of invoices issued by a wholesale water and sewerage undertaker and to comply with specific customer protection obligations. Ofwat considered that Tor Water Limited was unlikely to hold a dominant position in a relevant market, and that the issues related to licence and code compliance issues, therefore its competition law powers did not apply. Before Ofwat's enforcement action was finalised following its consultation, Tor Water exited the market and its customers were transferred to new retailers under the market's interim supply arrangements.
56. The PSR has also indicated that there were two occasions this year when it exercised certain specified powers,³⁰ which gave rise to the duty to consider whether it would be more appropriate to proceed under the Competition Act 1998. In May 2019, the PSR gave a specific direction to the operator of the Visa Europe card scheme requiring it to review and adopt appropriate incident

²⁸ This legislative obligation does not apply to NHSI (as Monitor).

²⁹ Under sections 18 and 22A of the Water Industry Act 1991.

³⁰ Under sections 54 to 58 (apart from the powers to give a general direction and the power to impose a generally imposed requirement) and section 62 of the Financial Services (Banking Reform) Act 2013 (FSBRA).

communication strategy and response plans to ensure that Visa Europe's participants, stakeholders and service users receive enough information in the event of any major system incident. In August 2019, the PSR gave specific directions to members of the UK's six largest banking groups requiring them to fully implement the Confirmation of Payee service by 31 March 2020. This is a service that aims to reduce fraud and misdirected payments in electronic bank transfers. In both cases, when exercising its specified powers, the PSR considered it was not appropriate to proceed under the Competition Act 1998 since neither case raised competition concerns.

57. In one case, Ofcom exercised sectoral enforcement powers which gave rise to the need to consider whether it would be more appropriate to proceed under the Competition Act 1998. This concerned Ofcom's investigation of BT's conduct in winning a tender competition to provide electronic communications services to public bodies in Northern Ireland. It considered that sectoral powers were more appropriate and continued with the investigation under the regulatory framework for the wholesale local access market.
58. The CAA did not exercise any of the specified powers that would require it to consider whether it would be more appropriate to proceed under the Competition Act 1998 during this period.
59. The other regulators (Ofgem, FCA and ORR) indicated that there were no cases in which, when the duty mentioned in paragraph 53 above was triggered, Competition Act 1998 powers could have addressed the relevant concerns such that they needed to consider whether it was more appropriate to proceed by using their competition powers rather than their regulatory powers.

Market studies and market investigations

60. The CMA and the sector regulators also have powers to conduct market studies and to make market investigation references to the CMA under the Enterprise Act 2002. This section focuses on developments in market studies and market investigations during the period covered by the report.

Market studies

Digital Comparison Tools

61. 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 switch or purchase products or services from a range of businesses. The CMA made a range of recommendations to address concerns,

including some specific recommendations addressed to Ofcom, Ofgem and the FCA.³¹

62. 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 UKRN to support implementation of some of the recommendations that were addressed to all the regulators.
63. While there have been some notable developments this year, the CMA considers that the overall progress made by regulators in implementing these recommendations has been mixed.

Ofcom

64. In December 2019, Ofcom consulted on proposals to amend its voluntary accreditation scheme for price comparison websites so that the scheme continues to benefit customers and to ensure compliance with new EU legislation.³² Under the proposals, accredited websites would be afforded greater flexibility to innovate to meet consumer demand, while remaining subject to high operating standards. The proposals also include simplifying the existing accreditation process by removing some of the more prescriptive requirements. For example, Ofcom would no longer require accredited DCTs to cover a fixed proportion of the market and would be permitted to present results in new and innovative ways, provided it is clear how they are generated. Ofcom expects to publish a final decision on reform of the scheme later in 2020.
65. Ofcom has a broader programme of work to improve people and businesses' access to data to help them navigate the telecoms market, including through DCTs. In addition to this, Ofcom has facilitated discussions between DCTs, network operators and retail providers to give DCTs access to reliable information about the services available at individual addresses.³³

³¹ More information on the CMA's recommendations are available on the CMA's website [here](#). As well as remedy recommendations, the CMA also opened a competition law investigation in relation to one DCT contract with home insurers, which appeared to limit insurers' ability to charge a lower price on one platform than on another ('wide price parity'/most favoured nation clauses) and may result in higher home insurance prices. See paragraphs 37 to 39 above.

³² Ofcom, [Digital comparison tools for telephone, broadband and Pay-TV: Proposed changes to Ofcom's voluntary accreditation scheme](#), December 2019.

³³ At least one DCT has reached such an agreement with Openreach.

66. Following the publication of BEIS' Smart Data Review, Ofcom is also developing proposals for an Open Communications initiative.³⁴ Ofcom is conducting market research to better understand what would make Open Communications a useful tool for people and businesses. It is also working with government to establish what powers Ofcom would need in primary legislation to implement the initiative.

Ofgem

67. In 2019-20, Ofgem has continued to pursue a number of activities in support of more informed consumer choice, including work on the midata project.³⁵ The CMA's market study also recommended looking into bringing DCTs into the scope of regulatory protection. A joint consultation between BEIS and Ofgem on flexible and responsive energy retail markets closed in September 2019 and covered the possible regulatory regime for third party intermediaries, in line with the CMA's recommendations.³⁶

FCA

68. The FCA authorises and regulates DCTs that carry out regulated activities. The FCA has taken steps which seek to address the CMA's recommendations, as well as a number of broader actions in support of consumer choice.
69. The FCA is implementing its two-year strategy for the portfolio of DCTs that it supervises. Information provision is a key priority and this includes how firms present excesses. The FCA has liaised with DCTs to understand more about their businesses and how they use and store data. It has also worked with the DCTs it supervises on their implementation of the Insurance Distribution Directive.³⁷
70. Also, relevant is the FCA's work on open finance. Open finance is an extension to open banking-like data sharing and third-party access to a wider range of financial products such as savings accounts, insurance, mortgages, investments, pensions and consumer credit. The FCA sees open finance transforming the way consumers and businesses engage with financial services. This includes making

³⁴ These proposals would require telecoms providers allow customers to share data held by their provider (such as their tariff and data usage) with third parties such as DCTs, to help people navigate the market and get a better deal. Ofcom expects to publish a consultation in 2020.

³⁵ Through the midata project, Ofgem will enable consumers to share their data between energy suppliers and trusted third parties. Midata will facilitate simpler and more accurate energy tariff comparisons, and enable new, innovative products, reliant on smart data.

³⁶ BEIS and Ofgem, [Joint consultation on the vision for future of the energy retail markets](#), July 2019.

³⁷ The Insurance Distribution Directive (IDD) is EU legislation which sets regulatory requirements for firms when designing and selling insurance products. The IDD aims to enhance consumer protection, raise conduct standards and to support competition between insurance distributors by creating a level playing field.

it easier for them to compare price and product features and to switch products or providers with less friction. Open finance will provide engaged consumers with greater control of their data and this is likely to impact the DCTs market.

71. Following action by the FCA and the CMA, personal current account (PCA) and business current account providers continued to publish better information about the services and service standards they offer consumers and small businesses. This information may help consumers, DCTs and the media to make meaningful comparisons of the services offered by different current account providers. The FCA has acted on feedback from comparison services and other key stakeholders to make it easier for them to access and use the quarterly data.³⁸
72. The FCA is refining its proposals requiring firms to report general insurance value measures to it. It expects to publish any value measures policy statement alongside the final report in its general insurance pricing practices market study.³⁹ In October 2019, the FCA launched a fourth pilot of the general insurance value measures data collection.
73. The FCA's work on open finance is a welcome development and should support better use of data to support financial services consumers. Likewise, the FCA's work on general insurance value measures should generate better information. Financial services are diverse, complex and detailed, which means that stronger comparison services are particularly important. While improved service metrics are available to help consumers compare service standards based on customers' experience, there remain opportunities to facilitate genuinely like-for-like comparisons.

CAA

74. Although the CMA did not make direct recommendations to the CAA, it has undertaken some work in this area to promote better comparison. Following the CAA's enforcement action against holiday DCTs,⁴⁰ it has implemented changes to the rules covering how flight-inclusive holidays are sold on price comparison websites, again to enable consumers to more easily and effectively make comparisons.⁴¹ These changes came into effect from April 2019.

³⁸ Since August 2019, the FCA webpage includes notes on interpreting the data, and sortable spreadsheets containing the data collected from firms' own websites.

³⁹ See [CP19/8, General Insurance Value Measures reporting](#), January 2019.

⁴⁰ CAA, [Undertakings provided to the CAA under Part 8 of the Enterprise Act 2002](#). This was conducted using its consumer powers under Part 8 of the Enterprise Act 2002.

⁴¹ See AST6.2 and references therein, [here](#).

UKRN

75. The CMA made recommendations where regulators could work together collaboratively, suggesting the UKRN as a potential vehicle for regulators to support this collaboration.
76. As reported last year, the UKRN 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. A decision was taken during the period covered by this report, for the UKRN to coordinate the work of the relevant regulators through its regular UKRN Senior Representatives Group rather than through a separate forum dedicated to DCTs given the progress that had been made.

Heat networks

77. The CMA's market study into heat networks - systems that heat multiple homes from a central source - concluded in July 2018. The UK government responded to the market study in December 2018, accepting the CMA's recommendations that a new regulatory framework should be established to ensure consumer protection for all heat network customers and consulting on high level options for implementation.⁴² The CMA has since been working closely with BEIS, the Scottish government and Ofgem on design and implementation.⁴³
78. In February 2020, BEIS began a more detailed consultation⁴⁴ on policy options for regulating heat networks to protect consumers and ensuring fair pricing, while supporting market growth and the development of low-carbon networks.⁴⁵
79. In March 2019, the Scottish government accepted the CMA's recommendations and in March 2020 it introduced the Heat Networks (Scotland) Bill to the Scottish Parliament.⁴⁶ In bringing forward this Bill, the Scottish Government is seeking to give effect to the CMA's recommendations within devolved competence.

⁴² BEIS, [Heat Networks: Ensuring Sustained Investment and Protecting Consumers](#), December 2018.

⁴³ In December 2019 ([Heat networks working group: recommendations](#), Scottish Government, December 2019).

⁴⁴ This followed the following earlier activity in April 2019 where BEIS published an open letter to network owners and operators encouraging them to improve consumers' experiences ahead of regulation see BEIS, [Open letter to heat network operators and owners](#), April 2019.

⁴⁵ BEIS, [Open consultation Heat networks: building a market framework](#), February 2020.

⁴⁶ [Energy Efficient Scotland: consultation on further development of the programme](#), Scottish Government, March 2019, page 24; [Official Report](#), the Scottish Parliament, November 2018.

Ticketing systems

80. In March 2019, the ORR closed its market study setting out three recommendations to tackle the market issues identified in the automatic ticket gates and ticket vending machine markets. The ORR continues to be involved in the implementation of these remedies. In September 2019, it published an update paper setting out the progress against each of the recommendations.⁴⁷
81. The ORR considers that sound progress has been made against each remedy. An industry working group into automatic ticket gates has been established with clear objectives and success criteria aimed at generating and improving competition and innovation in the automatic ticket gates market. Transport for London hosted a workshop highlighting possibilities for access to its systems. Additionally, the Rail Delivery Group has completed seven of the nine commitments it provided to the ORR and has taken on additional projects to further improve its accreditation processes.

Signalling market study

82. In January 2020, the ORR opened a market study into the supply of signalling systems. Signalling systems are an essential part of the railway. They keep passengers safe by ensuring trains do not come into conflict with each other and play a key role in freeing up capacity on the congested railway network in Great Britain. Signalling accounted for over £4 billion of Network Rail's spend over the 5-year period between 2014 and 2019.
83. The ORR's work will focus on the ability of suppliers to obtain access to interlocking technology, and the barriers to suppliers entering with their own technology. One important reason for looking at this market now is to ensure that any competition issues in the supply chain do not slow down, or drive up, the cost of the roll-out of the digital railway.⁴⁸

Market reviews and other markets work

84. As noted above, certain regulators have also used their sectoral powers to carry out market studies and market reviews to deal with competition issues affecting their sectors. Further detail on this is provided below.

⁴⁷ ORR, [Update Paper on Market study into the supply of automatic ticket gates and ticket vending machines](#), September 2019.

⁴⁸ Following the end of the reporting period, but prior to publication of this Report, the ORR published its decision to close the market study. The decision was taken given the impact of the current COVID-19 circumstances. For more information see ORR, [market study into the supply of signalling systems](#), April 2020.

CAA

85. The CAA is currently preparing to formally initiate a Market Power Determination relating to Manchester Airport.⁴⁹ If the CAA makes a determination that the market power test is met, then the airport operator in question will be subject to economic regulation by means of an economic licence.

Ofcom

86. Ofcom's market reviews are summarised below:

- (a) Ofcom launched its physical infrastructure market review in November 2018, looking at the provision of physical infrastructure for telecoms networks, for example, underground ducts and telegraph poles. In June 2019, Ofcom published its statement in relation to the review it conducted.⁵⁰
- (b) Ofcom launched its business connectivity market review in December 2018, examining the provision of high-speed connections (leased lines) in the UK.⁵¹ In June 2019, Ofcom published its statement in relation to this review.⁵²
- (c) Ofcom published its main consultation in January 2020 in relation to the wholesale fixed telecoms market review which sets out its detailed plans for regulation from April 2021 of the fixed telecoms markets that underpin broadband, mobile and business connections.⁵³ Ofcom will publish its decision statement ahead of the new regulation taking effect.
- (d) Ofcom launched a market review in November 2019 into markets relating to voice calls, which will cover call origination, call termination, interconnection and calls to 070 numbers.
- (e) Ofcom launched a market review into the wholesale fixed telecoms market in the Hull area in 2019. It aims to publish its consultation document in Q2 2020. Ofcom's statement, which it will publish ahead of the new regulation

⁴⁹ For more information on the MPD performed by the CAA see the CAA's [website](#).

⁵⁰ Ofcom, [Promoting competition and investment in fibre networks: review of the physical infrastructure and business connectivity markets, Volume 1: market analysis, SMP findings, and remedies for the Physical Infrastructure Market Review](#), June 2019.

⁵¹ These are used to connect large offices, mobile base stations and for backhauling traffic on broadband access networks. The review assessed competition for wholesale leased lines throughout the UK up to April 2021.

⁵² Ofcom, [Promoting competition and investment in fibre networks: review of the physical infrastructure and business connectivity markets, Volume 2: market analysis, SMP findings, and remedies for the Business Connectivity Market Review](#), 28 June 2019. This statement was subject to an appeal to the CAT. The appeal, as it related to non-price control matters, was [dismissed by the CAT in March 2020](#). The appeal of price control matters will be considered by the CMA.

⁵³ Ofcom, [Wholesale Fixed Telecoms Market Review](#), January 2020.

taking effect, will set out its detailed plans for regulation of the fixed telecoms markets that underpin broadband, mobile and business connections in the Hull area.

Ofgem

87. Ofgem's market reviews are summarised below:

- (a) The BEIS/Ofgem joint future energy retail market review was launched in November 2018. The focus of the review is to understand what policy, legal and regulatory changes may be needed to ensure that the energy retail market is fit for the future. In July 2019, BEIS and Ofgem published a joint consultation,⁵⁴ which concluded that the current regulatory framework can impede innovation and is likely to leave gaps in protection as the market develops. Ofgem and BEIS also identified a need to ensure appropriate safeguards are in place where necessary for all consumers, including those that do not engage in the market. The consultation closed for responses in September 2019.⁵⁵
- (b) The government and Ofgem also launched a more targeted joint comprehensive review into the industry codes that govern the energy system in November 2018.⁵⁶ The review is considering options for improving the existing arrangements, including the scope for fundamental reform. The review will cover the entirety of the rules underpinning the electricity and gas networks, and the wholesale and retail markets. Ofgem and the government have held a series of stakeholder engagement workshops and seminars to seek stakeholder views and input and, in July 2019, published a consultation on potential reforms.⁵⁷
- (c) Ofgem commenced its strategic review of the supply of gas and electricity to microbusiness customers in May 2019.⁵⁸ This review will continue throughout 2020. The market involves the supply of gas and electricity to microbusiness customers.⁵⁹ The review will focus on the five areas of

⁵⁴ BEIS and Ofgem, [Joint consultation on the vision for future of the energy retail markets](#), July 2019.

⁵⁵ This followed two workshops which were held in September 2019.

⁵⁶ Ofgem, [Opening Statement](#), November 2018.

⁵⁷ Ofgem/BEIS, [Consultation on reforming energy industry codes](#), July 2019.

⁵⁸ Ofgem, [Market review of microbusiness energy market](#), May 2019.

⁵⁹ A microbusiness is defined in the gas and electricity supply licence as a non-domestic customer: (a) which is a 'relevant consumer' (in respect of premises other than domestic premises) for the purposes in Article 2(1) of the Gas and Electricity Regulated Providers (Redress Scheme) Order 2008 (S.I. 2008/2268); or (b) which has an annual consumption of gas of not more than 293,000 kWh; or (c) which has an annual consumption of not more than 100,000 kWh electricity.

Ofgem's customer journey model.⁶⁰ Ofgem published its opening statement in May 2019, which set out the theories of harm and scope that it planned to consider and provided an update on progress in March 2020. Ofgem plans to publish a policy consultation seeking views on initial proposals in spring 2020. Further stakeholder engagement activities will be carried out on these proposals during summer 2020. The implementation period for policy interventions is planned for late 2020 to March 2021.

FCA

88. The FCA's market studies and market reviews are summarised below:

- (a) The FCA launched its mortgages market study in December 2016. Following publication of the final report in March 2019, in October 2019 it published a policy statement setting out rules that remove barriers that stop some mortgage customers from finding a cheaper mortgage deal.⁶¹ In January 2020, the FCA published its policy statement setting out changes to the mortgage advice and selling standards to make it easier for firms to present options to consumers without giving regulated advice.⁶²
- (b) Following its final report in its investment platforms market study⁶³ and the accompanying consultation paper,⁶⁴ in December 2019 the FCA published a policy statement confirming final rules to make it easier for consumers to switch platforms without having to sell their investments.⁶⁵ It also published an update on the progress industry has made, through STAR,⁶⁶ to improve the switching process.⁶⁷ The FCA intends to publish a consultation on its approach to exit fees later in 2020. The FCA's work aims to remove barriers to switching identified by the market study and make it easier for consumers to choose a platform that best meets their needs.

⁶⁰ The customer journey model sets out the different stages that microbusinesses will go through when looking for and securing an energy contract. At each stage of the customer journey, Ofgem has explained the practical principles it thinks should apply for microbusinesses to effectively engage in the market. Ofgem will map the evidence it collects in this strategic review of the microbusiness market to each stage of the customer journey model. Ofgem will then use the practical principles in its customer journey model to test whether microbusinesses' experience aligns with its vision for a positive customer experience.

⁶¹ MS16/2.3, [Mortgages Market Study Final Report](#), March 2019; PS19/27, [Changes to mortgage responsible lending rules and guidance – feedback on CP19/14 and final rules](#), October 2019.

⁶² PS20/1, [Mortgage advice and selling standards: feedback to CP19/17 and final rules](#), January 2020.

⁶³ MS17/1.3, [Investment Platforms Market Study Final Report](#), March 2019.

⁶⁴ CP19/12, [Consultation on Investment Platforms Market Study remedies including a discussion chapter on Exit Fees](#), March 2019.

⁶⁵ PS19/29, [Making transfers simpler – feedback to CP19/12 and final rules](#), December 2019.

⁶⁶ STAR is a not-for-profit joint venture set up to improve transfer times and customer communications.

⁶⁷ MS17/1, [Investment platforms market study: Industry progress to improve the switching progress](#), December 2019.

- (c) The FCA launched its general insurance pricing practices market study in October 2018 and published the interim report in October 2019.⁶⁸ This is part of a package of work to make general insurance markets work well for consumers. The interim report found that the home and motor insurance markets are not working well for all consumers. Industry has acknowledged the need to address concerns about pricing practices and has been taking some steps to do this. The FCA is considering possible remedies to address the concerns identified in its interim report and will publish its final report in due course. The FCA is considering a range of industry-wide measures to reform these markets so they work well for consumers.⁶⁹
- (d) In June 2019, the FCA launched a market study to examine how the credit information market operates and the impact it has on consumers, including those who may be vulnerable.⁷⁰ Credit information is used to help assess the financial standing of consumers and plays a key role in enabling access to a range of financial and non-financial services. Reflecting the concerns that have been identified, the market study is focusing on the following themes:
- the purpose, quality and accessibility of credit information;
 - market structure, business models and competition; and
 - consumers' engagement and understanding of credit information and how it impacts their behaviour.

In exploring these themes, the market study is considering how the sector is working now and how it may develop in the future.

- (e) The FCA launched its retirement outcomes review in July 2016. In July 2019, the FCA published a policy statement setting out its final rules and guidance on the second stage of remedies following this review.⁷¹ The FCA is introducing these remedies primarily to help non-advised drawdown consumers who struggle to make investment decisions. Its new rules and guidance aim to improve consumer decision making and promote competition by making the charges associated with drawdown products clearer and comparisons easier.

⁶⁸ MS18/1.2, [General insurance pricing practices Interim Report](#), October 2019.

⁶⁹ Also, in the immediate term, the FCA is continuing work to ensure firms improve the governance, control and oversight of pricing practices; deliver the changes required from firms following implementation of the IDD and other policy work; and continue to improve transparency and engagement at insurance renewal.

⁷⁰ MS19/1.1, [Credit Information Market Study Terms of Reference](#), June 2019.

⁷¹ PS19/21, [Retirement Outcomes Review: feedback on CP19/5 and our final rules and guidance](#), July 2019.

- (f) As part of its high-cost credit review, which it launched in November 2016, in October 2019 the FCA published a policy statement setting out new rules that require firms to publish a range of overdraft pricing details as part of the current account service metrics.⁷² In June 2019, the FCA introduced rules to radically reform overdraft pricing.⁷³ The FCA's changes are intended to protect consumers from high prices and unexpected charges, particularly some of the most vulnerable consumers who incur a disproportionate burden of high overdraft charges. The package of remedies will also promote more effective competition for overdrafts. As part of its high-cost credit work, in June 2019 the FCA also published a policy statement introducing additional protections on 'buy now, pay later' offers.⁷⁴ In July 2019, the FCA published its report on alternatives to high-cost credit.⁷⁵ The report recognises that not all consumers have access to mainstream credit, so sets out actions and recommendations to improve the availability and awareness of alternatives to high-cost credit.
- (g) The FCA launched its strategic review of retail banking business models in May 2017 and published its final report in December 2018.⁷⁶ The review aimed to give the FCA a greater understanding of retail banks' business models and the sources of competitive advantage that have helped major banks to keep their market shares in the recent past. Since completing the review, in the current reporting period, the FCA has collected a further year of financial and operational data from a wide range of retail banks, including the major banks, to update the analysis it conducted in the final report. The FCA will use this updated dataset in its work to monitor developments in the retail banking market, monitor and identify emerging areas of consumer harm and supervise individual firms. The FCA has also conducted exploratory work looking at business models and outcomes for consumers in small and medium-sized enterprises (SMEs) banking. In addition, the FCA has also taken action to improve consumer outcomes in mortgages, overdrafts and cash savings.⁷⁷

⁷² PS19/25, [Overdraft Pricing and Competition Remedies: Policy statement](#), October 2019.

⁷³ PS19/16, [High-cost Credit Review: Overdrafts policy statement](#), June 2019.

⁷⁴ PS19/17, [Buy Now Pay Later offers – feedback on CP18/43 and final rules](#), June 2019.

⁷⁵ FCA, [Alternatives to High-cost Credit Report](#), July 2019.

⁷⁶ FCA, [Strategic Review of Retail Banking Business Models Final Report](#), December 2018.

⁷⁷ The FCA has been working with mortgage lenders to help the industry implement the new modified affordability criteria. The changes to its rules are intended to help 'mortgage prisoners' who could materially benefit from switching to a cheaper deal (see paragraph 88(a)). The FCA also introduced a new policy to address harm in overdraft charges and make overdraft pricing simpler, clearer and fairer for consumers (see paragraph 88(f)). Furthermore, the FCA is consulting on measures to make the easy access savings market simpler, improve competition and increase interest rates for longstanding customers (see paragraph 88(j)).

- (h) The FCA launched its review of motor finance in July 2017 and published its final report in March 2019. It found that the way commission arrangements operate in motor finance can cause consumer harm on a potentially significant scale.⁷⁸ After assessing the options for intervening to address this harm, in October 2019 the FCA published a consultation paper with proposals to ban the way in which some car retailers, and other brokers in the motor finance sector, receive commission.⁷⁹ It also proposed minor changes to the way in which customers are told about commissions received by brokers to ensure that they receive more relevant information.
- (i) The FCA launched its review on whether there is effective competition in non-workplace pensions in February 2018 and published its feedback statement in July 2019.⁸⁰ It found that a lack of consumer engagement, combined with complex and confusing products and charges, has led to a lack of competitive pressure in the non-workplace pensions market, covering £470bn of retirement savings. The paper outlines, and seeks feedback on, a package of potential measures to address these issues.⁸¹ The FCA aims to issue a consultation paper on the simplification and disclosure remedies in due course. It will also publish papers on the effectiveness of Independent Governance Committees and on a proposed value for money framework for pensions, developed with the Pensions Regulator.
- (j) Following its July 2018 discussion paper,⁸² in January 2020 the FCA announced proposals to reform the easy access cash savings markets.⁸³ The FCA has previously raised concerns that competition is not working well for many of the 40 million consumers who hold either an easy access cash savings account or easy access cash ISA. The proposed new rules require firms to pay their customers single rates for easy access cash savings and ISA products no later than 12 months after the account is opened.
- (k) In March 2020, the FCA started a review into the use and value of data and advanced analytics in wholesale financial markets, both now and in the future.⁸⁴ The FCA is using its Call for Input to better understand how data and advanced analytics are being accessed and used, the value offered to

⁷⁸ FCA, [Our work on motor finance – final findings](#), March 2019.

⁷⁹ CP19/28, [Motor finance discretionary commission models and consumer credit commission disclosure](#), October 2019.

⁸⁰ FS19/5, [Effective competition in non-workplace pensions](#), July 2019.

⁸¹ These remedies including protecting consumers who do not or cannot engage with their investment decision; reduce charge complexity; promote charge transparency; and consider ways in which charges can be opened up to external scrutiny.

⁸² DP18/6, [Price discrimination in the cash savings market](#), July 2018.

⁸³ CP20/1, [Introducing a Single Easy Access Rate for cash savings](#), January 2020.

⁸⁴ FCA, [Accessing and using wholesale data – Call for Input](#), March 2020.

market participants and whether data are competitively sold and priced. There is, particular focus on trading data, benchmarks and market data vendors.

PSR

89. The PSR's market reviews are summarised below:

- (a) 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 2017.⁸⁵ During the current reporting period, the PSR has been monitoring Pay.UK's and Link's competitive procurement processes.
- (b) The PSR launched a market review 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. The concerns that prompted the market review are set out in the published final Terms of Reference.⁸⁶ Since publishing the Terms of Reference, the PSR has gathered and assessed evidence and information from a range of stakeholders using a variety of methods. The PSR also published for consultation three approach papers in 2019 that covered its proposed approach to the pass-through analysis, merchant survey and profitability analysis. The PSR aims to publish its interim report, which will present the analysis and preliminary conclusions for consultation, in June 2020.

ORR

90. The ORR's market reviews are summarised below:

- (a) In November 2018, the ORR launched a market review into delay compensation third party intermediaries (TPIs). These companies act as an interface, or intermediary, between customers⁸⁷ and train operating companies (TOCs) for the purposes of claims made under passenger delay compensation schemes. They provide passengers with an alternative to claiming directly from TOCs. In July 2019, the ORR made a series of recommendations in this market as part of its response to the Williams Rail

⁸⁵ The PSR required the operators of BACS and FPS (now Pay.UK for both systems) and LINK to have in place competitively procured central infrastructure contracts by a specified date. The purpose of the procurement remedy was to introduce competition in the market for central infrastructure for Pay.UK and LINK for the first time.

⁸⁶ PSR, [Card-acquiring services market review: Terms of Reference](#), January 2019.

⁸⁷ Most commonly these are individual rail passengers, although some claims companies focus on business customers such as travel management companies.

Review.⁸⁸ It proposed that, as part of an over-arching licence condition on delay compensation, TOCs should be obliged to accept claims for compensation from TPIs who are compliant with an agreed TPI Code of Conduct. In spring 2020, the ORR will consult on the content of the TPI Code of Conduct as part of its development of the delay compensation licence condition.

- (b) In July 2019, the ORR opened a review of the rolling stock leasing market competition remedies put in place by the Competition Commission in 2009.⁸⁹ In January 2020, the ORR launched a consultation setting out that it considers that changes in the market since 2009 have not sufficiently alleviated the competition problems identified by the Competition Commission and that there is not a sufficient basis to consider revoking or amending the Transparency Order at this time. The ORR invited comments on its decision not to recommend that the CMA undertake a further review of the Transparency Order and intends to publish a final decision in spring 2020.⁹⁰

Ofwat

91. Ofwat's market reviews are summarised below:

- (a) Since 1 April 2017, around 1.2 million eligible business customers in England and Wales have been able to choose their water retailer.⁹¹ In July 2019, Ofwat published its State of the Market report which sets out its review of the second year of market operation.⁹² Overall, Ofwat noted that while the market is continuing to develop and is delivering some further benefits for customers, there are still concerns regarding the slow growth of such benefits and slow progress in resolving the issues around effective market functioning. Ofwat highlighted in its report that significant and urgent action is required by the sector to resolve market frictions and deliver improved outcomes for customers. Ofwat noted that it had written to incumbent water companies in England to make it clear that – overall – wholesaler support for

⁸⁸ The Williams Rail Review was established in September 2018 to look at the structure of the whole rail industry and the way passenger rail services are delivered. The review will make recommendations for reform that prioritise passengers' and taxpayers' interests. For further detail please see the [Williams Review Page](#) on the Government website. For further details on the recommendations, please see [Annex A: ORR Market Review of Third Party Intermediaries in rail compensation](#).

⁸⁹ ORR, [Review of the Rolling Stock Leasing Market Investigation Order 2009](#), July 2019.

⁹⁰ ORR, [Consultation – Review of the rolling stock leasing market competition remedies](#) 9 January 2020.

⁹¹ In Wales, business customers using greater than 50MI per year can choose their water retailer. In England, all eligible business customers can switch.

⁹² This followed from Ofwat's July 2018 "Open for business" report which reported on the first year of the market.

the development of effective functioning markets was unacceptable (see sub-paragraph (b) below).

- (b) Ofwat commenced a review of incumbent company support for effective markets in May 2019 with a letter to the 15 incumbent English water companies.⁹³ The objective of the review is to assess whether incumbent water companies are providing acceptable levels of support to the development of effective markets. If not, then Ofwat committed to take further action, considering the full range of the regulatory tools at its disposal. In the letter, Ofwat expressed concern over the current overall level of the incumbent water company support for markets and identified a number of areas for improvement. In September 2019, Ofwat set out the questions and evidence required for the review in an additional letter to all the English incumbent water companies.⁹⁴ The letter was also sent to retailers in the business retail market, self-supply licensees and NAVs⁹⁵ to seek their views. The 15 incumbent water companies in England (and the other stakeholders) responded to Ofwat's letter at the end of October 2019 and relevant responses and supporting evidence were published in February 2020. Following its assessment of the evidence received from stakeholders, Ofwat plans to publish its findings and next steps by April 2020.

CMA

'Loyalty penalty' super-complaint

92. As reported last year, 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.
93. The CMA published its response in December 2018,⁹⁶ 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

⁹³ Ofwat, [Letter from Rachel Fletcher – Incumbent water companies and the development of effective markets](#), May 2019.

⁹⁴ Ofwat, [Letter from Emma Kelso to Incumbent water company CEOs](#), September 2019.

⁹⁵ NAVs refers to new appointments and variations. They are limited companies which provide a water and/or sewerage service to customers in an area which was previously provided by the incumbent monopoly provider.

⁹⁶ [Tackling the loyalty penalty: response to the super-complaint made by Citizens Advice on 28 September 2018](#), December 2018.

low incomes, or the elderly) more likely to pay a loyalty penalty as they can face additional challenges to switching providers or negotiating deals.

94. During the period covered by this report, Ofcom and the FCA undertook various pieces of work on the loyalty penalty:
- (a) For example, in June 2019, Ofcom introduced its Fairness for Customers commitments, which are aimed to ensure customers are treated fairly by their provider whether they are an existing customer or signing up to a new deal.⁹⁷ In July 2019, Ofcom published a document setting out its analysis and decisions to help ensure mobile handset customers in particular are treated fairly.⁹⁸ Ofcom also carried out an in-depth review of broadband pricing practices, which was published in September 2019, to understand the impact of pricing and to determine whether and how to help broadband customers paying high out-of-contract prices get better deals.⁹⁹
 - (b) Before the CMA published its super-complaint response, the FCA had already begun work in the mortgages, cash savings, and the home and motor insurance markets. Since completing its mortgages markets study (see paragraph 88(a)), the FCA has published in March 2020 detailed research to understand the characteristics of consumers who could switch, but do not, and announced plans to consult on proposed remedies for these consumers. In January 2020, the FCA consulted on the introduction of the Single Easy Access Rate in the cash savings market (see paragraph 88(j)) to simplify the market, increase competition between firms and increase interest rates for longstanding customers. The FCA's market study into general insurance pricing practices in home and motor insurance is ongoing (see paragraph 88(c)). The FCA's work on fair pricing in financial services sets out its overall framework for thinking about the fairness of loyalty pricing and other forms of price discrimination.¹⁰⁰

⁹⁷ Ofcom, [Britain's biggest broadband and phone firms to put fairness first](#), June 2019.

⁹⁸ Ofcom, [Statement and consultation: Helping consumers to get better deals in communications markets – mobile handsets](#), July 2019.

⁹⁹ Ofcom, [A Review of pricing practices in fixed broadband](#), September 2019. Ofcom is carrying out other work in this area, including: (a) exploring the case for a new special tariff to protect broadband customers on low incomes or with other special social needs; (b) considering requiring providers to take part in a collective switch trial designed to help the least engaged customers, including vulnerable customers; and (c) introducing new rules requiring broadband customers to be told when their contract is coming up to an end and shown the best deals available – both when their contract is up, and annually thereafter.

¹⁰⁰ After launching a debate on this issue in October 2018, the FCA published its Feedback Statement in July 2019. The FCA is now applying this thinking to issues that it identifies in its market specific work, for example, its general insurance pricing practices market study. It is also starting the work required to formally embed its thinking into its regulatory approach.

95. 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 published two progress updates in June 2019 and January 2020. These updates reported on progress by the regulators, the CMA, government and industry against the recommendations set out in our super-complaint response. While some progress by the regulators has been made in meeting the objectives underlying the CMA's recommendations, this process is not yet complete, and the timing for completion will likely be impacted by the COVID-19 pandemic.¹⁰¹
96. In addition, the updates set out a framework for business to consider for the purposes of ensuring they are treating customers fairly in situations where they are at risk of being subject to a loyalty penalty. The updates also point to work the CMA will take forward to explore and tackle issues associated with the loyalty penalty across established and emerging sectors of the economy.

Engagement between the CMA and regulators on digital markets

97. In July 2019, the CMA published its digital markets strategy, confirming the CMA's commitment to promoting competition and protecting consumers in rapidly developing digital markets, while fostering innovation.¹⁰² The strategy drew together the extensive past and ongoing work by the CMA on digital markets issues and sets out the CMA's priorities for future work. At the same time as the digital markets' strategy was published, the CMA launched a market study into online platforms and digital advertising.¹⁰³
98. The effects of digitalisation are felt across the whole economy, including the UK's regulated sectors. Accordingly, the strategy emphasised the importance of close collaboration between the CMA and other sector and cross-sector regulators (and international partners) to respond to both the opportunities and challenges that digital markets present.
99. In the past year, the CMA has worked with a wide range of authorities on digital-related issues, including other cross-sector bodies like the Information Commissioner's Office (ICO) and Trading Standards, sector regulators like Ofcom, the FCA and the PSR, and international counterparts around the world.
100. Areas of engagement between the CMA and concurrent and non-concurrent regulators related to the CMA's digital markets strategy, include:

¹⁰¹ CMA, [Update on Loyalty Penalty](#), January 2020. FCA, [Information for firms on coronavirus \(Covid-19\) response](#), March 2020.

¹⁰² CMA, [Digital Markets Strategy](#), July 2019.

¹⁰³ CMA, [Online platforms and digital advertising market study](#), July 2019.

- (a) consideration of proposed regulation of the digital markets; and
- (b) developing shared expertise with respect to data, technology and analytics.

Consideration of proposed regulation of digital markets

101. A number of government-commissioned reports published in the past year have identified the potential for online harms and discussed wide-ranging recommendations to respond to challenges posed by digital markets. These include proposals for new regulation set out in the Online Harms White Paper¹⁰⁴ (which focuses on content and conduct harms), the Furman Report (which focuses on competition concerns arising from the behaviour of large online platforms), and the Cairncross Review¹⁰⁵ (which focuses on the sustainable future of journalism).
102. The recommendations put forward in the Furman Report include the establishment of a digital markets unit to oversee a new body of pro-competitive ex-ante regulation in digital markets. While the report notes that it would be for government to decide on the institutional arrangements of a digital markets unit, it recognises that elements which could make up a pro-competition approach relate to the functions and skills of a number of bodies, being the CMA, Ofcom and the ICO.
103. As the bodies identified in the report and acknowledging the importance of strong regulatory cooperation on digital issues, the CMA, Ofcom and the ICO have engaged closely in the past year to develop a deeper understanding of their respective regulatory remits with respect to online issues and to consider the implications of the proposals for new regulation.
104. In March 2020,¹⁰⁶ the Government announced as part of the Budget that it was accepting the six strategic recommendations included in the Furman Report, and commissioning the CMA to lead a cross-regulator Digital Markets Taskforce to advise on the potential design and implementation of pro-competitive measures for digital platform markets. The Taskforce will be housed in the CMA and draw on the expertise of Ofcom and the ICO.

¹⁰⁴ DCMS, [Online Harms White Paper](#), April 2019. In February 2020, the government put forward further detail on its Online Harms White Paper. This set out plans for a new system of accountability and oversight for tech companies, moving beyond self-regulation. The plans include a new regulatory framework for online safety to make clear companies' responsibilities to keep UK users, particularly children, safer online with action to counter illegal content and activity. The plans envisage an independent regulator which will set clear safety standards, backed up by reporting requirements and effective enforcement powers.

¹⁰⁵ [The Cairncross Review](#): a sustainable future for journalism, February 2019.

¹⁰⁶ DCMS and CMA, [Digital markets taskforce: terms of reference](#), March 2020.

105. The CMA has also engaged with the PSR and the FCA on potential regulatory change. It expects that cooperation with all sector regulators on digital issues, including those involving proposed regulation of digital markets, will continue in the coming year.

Developing shared expertise with respect to data, technology and analytics

106. One of the ways in which the CMA and concurrent regulators work together to promote competition and the functioning of markets for consumers is through the sharing of people, knowledge and skills. Relevant to digital markets, this includes through developing shared capabilities with respect to data, technology and analytics.
107. In early 2019, the CMA established a Data, Technology and Analytics (DaTA) unit. The DaTA unit's aim is to support the CMA with technical understanding of data and algorithms, to enhance the CMA's understanding of how digital markets work, and to develop technological tools to facilitate the CMA's case work. Other sector and cross-sector regulators have also been expanding their technical and analytical expertise.
108. One forum in which this expertise is shared amongst regulators is through the Regulators and Artificial Intelligence (AI) working group, a group established by the ICO, of which the CMA and other sector regulators including Ofcom, the FCA and PSR, Ofgem, CAA and Ofwat are members. The group shares regulators' understanding on the challenges which AI presents and explores opportunities for coordination between regulators on AI initiatives or inquiries. Another opportunity for sharing expertise has included a workshop between the CMA, Ofcom and the ICO on data analytics tools for identifying sources of disinformation (such as fake online reviews).

Follow-up to previous market investigations

109. The following market investigations have all completed before the beginning of the relevant reporting period, and no new market investigations in the regulated sectors have been launched during that time. The remainder of this section sets out the follow-up work that has been conducted in relation to these market investigations during this period.

Investment consultants market investigation

110. 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 2018.¹⁰⁷
111. The Investment Consultancy and Fiduciary Management Market Investigation Order 2019 (the Order), made and published in June 2019, gives effect to the CMA's remedies as regards the conduct of firms and pension scheme trustees.¹⁰⁸
112. The CMA has worked closely with the FCA, DWP and the Pension Regulator in the remedy implementation phase leading up to the Order. It continues to do so in relation to the transposition of the Order into the relevant sector-specific regulatory regimes. When these sector-specific rules and regulations come into force, the provisions of the Order will cease to have effect. This so-called 'sunset' of the Order may happen in stages, as and when the rules and regulations come into force. The FCA has continued to provide the CMA with sector-specific expertise during the CMA's remedy design and implementation.

Retail banking market investigation

113. The CMA's market investigation¹⁰⁹ into the supply of retail banking services to PCA customers and to SMEs in the UK¹¹⁰ 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.
114. All elements of the CMA's remedies package are now in place. Key developments in 2019, including ones which have involved FCA input, include:
 - (a) Continuation of the implementation of Open Banking, with enhancements to the regulatory standards having been introduced and further amendments planned for 2020. The CMA is also working closely with the FCA on its work developing a strategy for open finance, including as a member of the FCA's Open Finance Advisory Group.

¹⁰⁷ The [investment consultants market investigation](#) was launched in 2017 following a reference from the FCA.

¹⁰⁸ More information is available on the CMA's website [here](#). The Order came into force in December 2019.

¹⁰⁹ [Retail banking market investigation](#) launched in November 2014.

¹¹⁰ 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.

- (b) Continued close working between the FCA, the CMA and other stakeholders to ensure that the development and implementation of Open Banking align with the revised Payment Services Directive (PSD2). PSD2 is intended to increase consumer protection and payment security, as well as to promote competition and innovation in the retail banking sector. The FCA continues to sit as an observer on the Open Banking Implementation Entity that was set up as one of the CMA's retail banking remedies. As well as the FCA's role in the CMA remedies, under PSD2, it is working to ensure that open banking services are introduced securely, monitoring the number and nature of new services on the market and the numbers of customers using them. It has also taken the lead in the broader public debate on open finance.
- (c) A review by the CMA of Part 6 of the Retail Banking Market Investigation Order 2017 (Part 6), which required banks to alert customers when they enter into an unarranged overdraft, so that customers can avoid or reduce unarranged overdraft charges. Following new rules introduced by the FCA, which took effect in December 2019 and replicate the CMA's requirements, the CMA decided to remove Part 6 requirements from the Order.¹¹¹
- (d) Publication in August 2019 and February 2020 of the core service quality indicators. These give consumers and SMEs the opportunity to compare the service quality that banks provide on a variety of core service quality metrics. The information is published every six months. These core metrics were supplemented by additional service quality metrics introduced by the FCA, following the CMA recommendations.

115. Prior to the review of Part 6 (see paragraph 114 (c) above), the CMA investigated a number of breaches relating to this section of the Order. Under Part 6, banks and building societies were required to alert customers (typically by text message) warning them that to avoid charges, they had to take action. Some banks failed to do this before charging customers. The CMA's investigations resulted in the CMA publishing letters to Nationwide¹¹² and Santander¹¹³ detailing the nature of the breaches, and issuing directions to Nationwide,¹¹⁴ Santander¹¹⁵ and HSBC.¹¹⁶ Over £17m in charges are being refunded to customers as a result.

¹¹¹ CMA, [Review of Part 6 of the Retail Banking Market Investigation Order 2017](#), December 2019.

¹¹² CMA, [Letter to Nationwide on breaches of the Retail Banking Order](#), February 2020.

¹¹³ CMA, [Letter to Santander on breaches of Retail Banking Order](#), May 2019.

¹¹⁴ CMA, [Retail Banking unarranged overdraft alerts: Directions to Nationwide](#), August 2019.

¹¹⁵ CMA, [Retail Banking unarranged overdraft alerts: Directions to Santander](#), November 2019.

¹¹⁶ CMA, [Retail Banking unarranged overdraft alerts: Directions to HSBC](#), November 2019.

Energy market investigation

116. The CMA's energy market investigation, which followed a reference by Ofgem and concluded in June 2016, resulted in a package of remedies including 26 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 aimed to increase consumer activity and engagement, and therefore put additional pressure on energy retailers to compete vigorously for customers.
117. During the period covered by this report, Ofgem continued to carry out an extensive trials programme, which tested ways to increase consumer engagement in the domestic retail energy market. The most successful intervention, the opt-in Collective Switch, resulted in over one in four trial participants switching their tariff. Following the positive outcomes of the first trial, four additional opt-in Collective Switch trials confirmed that results can be replicated and scaled up.¹¹⁷ During these trials, disengaged energy consumers received a series of letters offering an exclusive tariff and support with switching. The trials findings clearly indicate that design that is informed by behavioural insights can remove the hassle from the switching process in ways that can have a substantial impact on customer engagement. These results will inform Ofgem's plans for a more competitive retail market after the price cap is lifted.
118. In spring 2019, Ofgem paused its work on developing a database of disengaged energy consumers in order to review the programme and tested whether it was on the right track to deliver the best outcomes for disengaged consumers in the most appropriate way. Ofgem has completed the review and decided not to progress its development within the current report period. The reason for its decision was to focus on determining how best Ofgem can test and enable a number of consumer engagement interventions, including the ground-breaking opt-in Collective Switch, which would ensure that the retail energy market works more effectively in the future. These interventions will help Ofgem inform its recommendation with respect to when the current default tariff cap is removed – by the end of 2023.
119. In October 2019, Ofgem published its State of the Energy Market Report. The report includes an assessment of competition in retail and wholesale energy markets, affordability, vulnerability and how energy networks are performing.¹¹⁸ In terms of retail and wholesale energy markets, the report found that medium

¹¹⁷ Ofgem, [Collective Switch Trials: Methodology and Results](#), September 2019.

¹¹⁸ Report also covers the UK's progress in reducing greenhouse gases and the security of our energy supplies.

and small suppliers now supply around 30% of consumers and that switching rates have increased to 20% and hit a record high.¹¹⁹

120. The CMA notes that the implementation of the CMA's remedies has now largely been completed, with Ofgem now focussing on a number of on-going programmes which seek to enhance consumer engagement in the market. These include putting in place faster switching, requiring the half-hourly settlement of electricity and supporting smart meter roll-out.¹²⁰ In addition, the CMA notes the positive results from the Collective Switch proposition and encourages Ofgem to continue to pursue this proposition, as it believes that a market-wide solution is important. The findings of its State of the Energy Market Report are positive, highlighting that consumer engagement is increasing as concentration in the retail market declines.

General cooperation

121. The CMA and regulators have continued to cooperate more generally, in line with the practical arrangements set out in the Concurrency Regulations,¹²¹ the Concurrency Guidance¹²² and the bilateral Memoranda of Understanding agreed between the CMA and each of the sector regulators.¹²³

Information-sharing

122. In line with previous years, the CMA and the sector regulators have continued during the period of this report 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 Memoranda 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.

¹¹⁹ More information on Ofgem's State of the market report 2019 is available on [Ofgem's website](#).

¹²⁰ Some of these programmes relate to CMA energy market investigation remedies, while others are separate from and in addition to those remedies.

¹²¹ Competition Act 1998 (Concurrency) Regulations 2014.

¹²² CMA, [CMA10: Regulated Industries: Guidance on concurrent application of competition law to regulated industries](#), March 2014.

¹²³ The Memoranda of Understandings with the concurrent competition regulators can be found on the [CMA's website](#).

Case allocation

123. Since April 2019, new Competition Act 1998 cases were allocated to Ofcom and Ofwat. An investigation into the health care services sector has also been allocated to the CMA. As in previous years, the process of case allocation has continued to take place smoothly. As observed in previous reports, case allocation permits the CMA and the respective regulator to use their complementary resources on cases to good effect and to ensure that cases are undertaken by the authority best placed to do so.

Support on casework

124. The CMA and sector regulators continue to provide each other with assistance on casework. Support is provided in a range of ways, including by sharing practical experience and expertise (e.g. regulators have shared their sector-specific knowledge on cases and the CMA has shared relevant internal guidance and template documents) and through active involvement of officials at key stages of an investigation (e.g. digital forensics support). There is also sharing of relevant policy, such as internal guidance and template documents. There has also been cooperation between the CMA and sector regulators on issues arising in connection with their concurrent powers to apply the competition prohibitions under EU law.

Support on competition enforcement work

125. The CMA and the regulators continue to provide each other with support on their respective Competition Act 1998 investigations in the regulated sectors. For example, the CMA advised various regulators on how to handle the leniency aspects of their cases. The CMA has more generally provided the regulators undertaking cases with procedural advice relevant to their cases. Examples include advice on access to file and conducting witness interviews as well as substantive advice such as on developing theories of harm and economic and legal analysis. The regulators have provided sector specific expertise. For example, the FCA has provided the CMA with sector specific expertise relevant to the CMA's ongoing cases in the financial services sector. The PSR and the FCA have provided sector specific expertise to Ofgem on its ongoing Chapter II/Article 102 investigation into an undertaking providing services to the energy industry. In addition, the NIAUR provided support to Ofgem in the Chapter II/Article 102 investigation into wholesale trading activities that closed during the relevant period with commitments.

Support on markets work

126. 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 while the CMA has provided advice to the ORR on the signalling market study and the rolling stock Transparency Order review.¹²⁴

Support on mergers work

127. The CMA has continued to receive valuable input and support from the regulators when investigating mergers involving the regulated sectors. This is testament to the strong working relationship the CMA has built with the regulators. 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 involved the regulated sectors.

Energy

128. During the period of this report, Ofgem provided advice, data and market-specific information as well as reasoned submissions on a number of cases including: the OVO/SSE¹²⁵ merger, notified to the CMA in September 2019, and in the Calvin/BV merger inquiry¹²⁶ (smart meters merger), notified to the CMA in June 2019. In terms of European cooperation, Ofgem assisted the CMA in its advisory role to the European Commission during the review of the EON/RWE transaction.¹²⁷

129. Furthermore, Ofgem has also provided regular support to the CMA's Merger Intelligence Committee relating to mergers in the energy sector.¹²⁸

Communications

130. Ofcom supplied information to the CMA in the context of the parallel Phase 1 investigations into the Bauer Media Group's acquisitions of certain radio businesses. Ofcom continued to provide input to the CMA on the Phase 2 merger inquiry into those acquisitions.¹²⁹

¹²⁴ For more detailed information on the market investigations mentioned, see paragraphs 109 to 120 above.

¹²⁵ CMA, [OVO/SSE Retail merger inquiry](#), October 2019.

¹²⁶ CMA, [Calvin/BV merger inquiry](#), June 2019.

¹²⁷ EU Commission, [EON/RWE Merger inquiry](#), September 2019.

¹²⁸ For more information on the CMA's merger intelligence function see [CMA56, Guidance on the CMA's mergers intelligence function](#), September 2017.

¹²⁹ CMA, [Bauer Media Group merger inquiry](#), August 2019.

131. Ofcom has also provided assistance in the Phase 1 review of Cellnex UK Limited/Arqiva Services Limited merger inquiry, launched in February.¹³⁰

Rail services

132. The ORR provided assistance in the Phase 1 review of Abellio/East Midlands rail franchise and the Phase 1 review of the First Rail Holdings & Trenitalia UK/West Coast Partnership Rail Franchise. Both mergers resulted in undertakings in lieu.¹³¹

Financial services/payment services

133. The PSR has also provided payments expertise to the CMA, assisting the CMA in its decision on whether to investigate certain Phase 1 mergers taking place in the payments industry in the period, including the acquisition by Visa International Service Association of Earthport plc.¹³² The PSR has provided some input to the phase 1 and 2 merger inquiry into Bottomline/Experian Payments Gateway.¹³³ The PSR also provided sector specific expertise and knowledge to the CMA during pre-notification of the CMA's Phase 1 review of the Mastercard/Nets case.¹³⁴
134. 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 PayPal of iZettle.¹³⁵ The Final Report was published in June 2019. The FCA and PSR have assisted the CMA's Mergers Intelligence Committee by providing industry-specific insights to support the Committee's work.
135. The FCA has also assisted the CMA by providing sector and regulatory insights in a number of the CMA's Phase 1 investigations. For example, in the CMA's investigation of the completed acquisition of GBST by FNZ,¹³⁶ the FCA assisted the CMA to better understand the investment platforms sector and FNZ's regulated activities. The case was referred to an in-depth investigation by the CMA on 1 April 2020.

¹³⁰ CMA Cellnex UK Limited/ Arqiva Services Limited merger inquiry, February 2020.

¹³¹ CMA, [Abellio East Midlands Limited / East Midlands rail franchise](#), June 2019; CMA, [First Rail Holdings & Trenitalia UK / West Coast Partnership Rail Franchise](#), September 2019.

¹³² CMA, [Visa International Service Association / Earthport plc merger inquiry](#), April 2019.

¹³³ CMA, [Bottomline Technologies \(de\), Inc / Experian Limited merger inquiry](#), August 2019.

¹³⁴ CMA, [Mastercard / Nets](#), February 2020. The investigation of this case was referred to the European Commission under Article 22 of [Council Regulation \(EC\) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings](#) (European Union Merger Regulation).

¹³⁵ CMA, [PayPal Holdings, Inc / iZettle AB merger inquiry](#), June 2019.

¹³⁶ CMA, [FNZ/GBST merger inquiry](#), February 2020.

Airport Services

136. The CAA assisted the CMA with its investigation of two cases: Swissport Group UK Ltd/Heathrow Cargo Handling Ltd Phase 1 merger inquiry;¹³⁷ and Sabre/Farelogix merger inquiry.¹³⁸ In both cases, the CAA provided sector expertise and provided the CMA with relevant data.

Healthcare

137. NHSI has continued to work closely with the CMA to support its assessment of NHS mergers. This has included Aintree University Hospital NHS Foundation Trust/Royal Liverpool and Broadgreen University Hospitals NHS Trust Phase 1 merger.¹³⁹ NHSI provided advice to the CMA on patient benefits of the merger and a paper setting out its views on competition in the market.
138. NHSI has also worked closely with the CMA on the Royal Bournemouth and Christchurch Hospitals NHS Foundation Trust/Poole Hospital NHS Foundation Trust merger inquiry.¹⁴⁰
139. In January 2019, the NHS issued its Long-Term Plan. One aspect of this was to recommend to government that NHS mergers be exempted from the merger control provisions of the Enterprise Act. The CMA does not oppose this and have since been working with the Department of Health and NHS regulators on the legislative change.

Multilateral cooperation

140. In addition to the regular bilateral meetings that the CMA holds with the sector regulators, valuable cooperation occurs multi-laterally through the UKCN.¹⁴¹ This cooperation has an important function in ensuring consistency in the application of the competition regime but also in facilitating the sharing of best practice and knowledge.
141. To develop and ensure consistency in the enforcement of the competition framework, the UKCN is often used by the CMA and sector regulators to hold

¹³⁷ CMA, [Swissport Group UK Ltd/Heathrow Cargo Handling Ltd merger inquiry](#), March 2019.

¹³⁸ CMA, [Sabre/Farelogix merger inquiry](#), June 2019.

¹³⁹ CMA, [Aintree University Hospital NHS Foundation Trust/The Royal Liverpool and Broadgreen University Hospitals NHS Trust merger inquiry](#), June 2019.

¹⁴⁰ CMA, [Royal Bournemouth and Christchurch Hospitals NHS Foundation Trust/Poole Hospital NHS Foundation Trust merger inquiry](#), February 2020.

¹⁴¹ The mission of the UKCN is to promote competition for the benefit of consumers and to promote anti-competitive behaviour, both through facilitating the use of competition powers and the development of pro-competitive regulatory frameworks.

ongoing discussions and presentations based on their experiences of specific issues from their competition work. For example, the FCA and Ofgem delivered presentations on their experiences with the disclosure process, penalty setting and handling of procedural challenges by the Procedural Officer in their enforcement cases.

142. The UKCN is also used to facilitate workshops on specific issues of a procedural or substantive nature. For example, in September 2019, the CMA hosted a workshop on best practice relating to the approach and procedures used by the CMA and sector regulators in relation to the calculation of penalties in line with the penalty guidance for competition enforcement cases. The workshop was held to ensure that the sector regulators understood the rationale and the mechanics of the CMA's approach.
143. Furthermore, a working group set up in 2018 to share know-how and best practice for the use of Case Decision Groups in competition enforcement cases, and to consider the merits of developing some best practice principles aimed at ensuring effective and efficient enforcement has continued to meet throughout this period. It will continue its work in 2020 with a broader remit to discuss wider issues related to the handling of competition investigations.
144. Secondments continue to be an important way of sharing expertise and transferring knowledge between the CMA and the sector regulators. A number of secondments were organised during the period of this report between regulators but also between them and the CMA.¹⁴²

UK's withdrawal from the EU

145. The CMA has worked hard to ensure that the competition and concurrency regimes remain resilient and effective following the UK's withdrawal from the EU on 31 January 2020. This has involved ensuring that both the CMA and the regulators have a clear understanding of what the Withdrawal Agreement means in practice for on-going Competition Act cases, especially at the end of the transition period. This understanding has been set out in the CMA Guidance

¹⁴² Examples of secondments arranged during the current reporting period include the CAA receiving secondees from Ofcom to assist with its Market Power Determination (see paragraph 97 above). The FCA has seconded staff to the CMA but also to other regulators (e.g. the PSR, Ofcom). Staff secondments from the FCA to the PSR were arranged in the period to assist with the PSR's market review into the supply of card-acquiring services in the UK carried out under FSBRA. Staff secondments between the FCA and Ofcom were arranged to allow for greater sharing of regulatory best practice, both in competition analysis and economic analysis. Ofcom seconded a member of staff to the FCA for twelve months and the FCA seconded two members of staff to Ofcom for six months each. Ofcom and Ofgem have also seconded staff to the CMA and Ofwat.

published on 28 January 2020,¹⁴³ and which explains, for example, that Articles 101 and 102 cease to apply in the UK at the end of the transition period and that the European Commission would be able to continue with the UK element of on-going cases initiated before the end of the transition period.

146. The UKCN meetings have proven useful for the CMA and the regulators to regularly discuss their preparations for the UK's withdrawal. The CMA has updated the regulators on various developments related to the UK's withdrawal from the EU, such as the revised Withdrawal Agreement and Northern Ireland Protocol; the CMA's interactions with government; and broader readiness preparations. The CMA has involved the regulators in the preparation of the CMA Guidance.
147. The CMA also worked closely with certain regulators on various pieces of proposed legislation (and related guidance) which would have been required in the event that the UK withdrew from the EU without the Withdrawal Agreement having been in place. The CMA and the sector regulators have also been involved in the development of arrangements for cooperation with international competition authorities.

¹⁴³ This detailed guidance covers mergers, antitrust and consumer protection enforcement during the transition period under the Withdrawal Agreement. See CMA113, Guidance on the functions of the CMA under the Withdrawal Agreement (CMA 113, 28 January 2020) ("CMA Guidance"), for more detail.