

July 2019

## **Memorandum of understanding between the Competition and Markets Authority and the Financial Conduct Authority – concurrent competition powers**

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*In April 2018, paragraphs 48 and 49 of this Memorandum of Understanding were amended to reflect changes introduced by the Senior Manager and Certification Regime.*

*It was further updated in July 2019 to reflect the FCA's new concurrent competition jurisdiction in relation to the provision of claims management services in Great Britain.*

## Foreword

The changes to the United Kingdom's (UK) competition law system, introduced under the Enterprise and Regulatory Reform Act 2013 and in force since April 2014, are designed to improve the effectiveness of competition law enforcement in this country.

The Competition and Markets Authority (CMA) has competition law powers which apply across the whole economy. Sectoral regulators such as the Financial Conduct Authority (FCA) may exercise the competition law powers to enforce the prohibitions on anti-competitive agreements and on abuse of a dominant position, and to make market investigation references, concurrently with the CMA in those sectors for which they have responsibility.

The Enterprise and Regulatory Reform Act 2013 introduced a number of changes to improve the working of concurrency and to enable closer working between the CMA and sectoral regulators. When the FCA acquired its concurrent competition powers, these reflected the enhanced concurrency provisions introduced by the Enterprise and Regulatory Reform Act 2013.

The CMA and the sectoral regulators have demonstrated their commitment to making the concurrency framework more effective through the establishment of the UK Competition Network (UKCN). This represents an enhanced forum for cooperation which will enable closer working with the objective of more consistent and effective use of competition powers across all sectors. In their statement of intent in December 2013, the members of the UKCN affirmed: 'The mission of the UKCN will be to promote competition for the benefit of consumers and to prevent anti-competitive behaviour both through facilitating use of competition powers and development of pro-competitive regulatory frameworks, as appropriate.'<sup>1</sup>

This memorandum of understanding (MoU) represents a further stage in the process of cooperation between the CMA and the regulators, setting out more practical detail on how the CMA and the FCA will work together within the framework of competition law.

The main purpose of this MoU is to establish an understanding between the CMA and the FCA as to how this closer working will work in practice. It draws on the legislation which sets out the formal framework for how concurrency will operate and also, importantly, sets out our bilateral commitment to look for opportunities to work together, including within the framework of the UKCN, to promote competition for the benefit of consumers. We shall do this by the sharing of expertise, information, ideas

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<sup>1</sup> UKCN (2013), [Statement of intent](#).

and experience and each of us will commit to doing this efficiently and with a mutual regard for each other's statutory position and strategic objectives.

We believe that this MoU offers a valuable basis for that cooperation, in the interests of the CMA, the FCA, the financial services industry in the UK and, most importantly of all, consumers.

**Andrea Coscelli**  
**CEO, CMA**

**Andrew Bailey**  
**CEO, FCA**

# Memorandum of understanding between the Competition and Markets Authority and the Financial Conduct Authority

## *Purpose of this memorandum of understanding*

1. This MoU sets out working arrangements between the CMA and the FCA in relation to:
  - (a) their concurrent powers to apply the prohibitions on agreements that prevent, restrict or distort competition, and on the abuse of a dominant position, under the Chapter I prohibition and the Chapter II prohibition of the Competition Act 1998 and under Article 101 and Article 102 of the Treaty on the Functioning of the European Union – referred to in this MoU as the ‘competition prohibitions’;
  - (b) their concurrent powers to undertake Enterprise Act 2002 market studies, and to make references to the CMA for the constitution of a CMA group to conduct an in-depth market investigation into single or multiple markets for goods or services in the UK under the Enterprise Act 2002 – referred to in this MoU as the ‘market provisions’; and
  - (c) cooperation in respect of competition scrutiny under the Financial Services and Markets Act 2000 (FSMA);

in the provision of financial services in the UK and the provision of claims management services in Great Britain (together, ‘the FCA’s concurrent jurisdiction’). The FCA and CMA have entered into a separate MoU in relation to consumer protection.

2. This MoU is not intended to have legal effect.
3. This MoU is to be read alongside other material concerning the relations between the CMA and the FCA, including: FSMA; the Competition Act 1998; the Enterprise Act 2002; the Enterprise and Regulatory Reform Act 2013; the Competition Act 1998 and Other Enactments (Amendment) Regulations 2004; the Competition Act 1998 (Concurrency) Regulations 2014, referred to in this MoU as the concurrency regulations; the CMA’s guidance on concurrent application of competition law to regulated industries, referred to in this MoU as the concurrency guidance;<sup>2</sup> and the FCA’s guidance on its powers and

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<sup>2</sup> CMA (2014), [Regulated industries: Guidance on concurrent application of competition law to regulated industries \(CMA10\)](#).

procedures under the Competition Act 1998.<sup>3</sup> This MoU supplements and does not supplant that material.

4. The arrangements covered by this MoU are, wherever possible, set out in terms providing sufficient flexibility for the relationship between the FCA and the CMA to develop in the light of experience. The CMA and the FCA commit to review these arrangements from time to time to evaluate their continuing fitness for purpose. Such review can be initiated at the request of the CMA, the FCA or a member of the UKCN. This MoU may only be revised by agreement between the CMA and the FCA.

### ***Context***

5. This MoU operates within the framework of the legislative provisions referred to in paragraph 1, the concurrent powers of the FCA under sections 234I to 234O of FSMA and any other applicable sector specific legislation from time to time.

### ***Role of the CMA***

6. The CMA is a non-ministerial department, established under the Enterprise and Regulatory Reform Act 2013.
7. The CMA works to promote competition for the benefit of consumers, both within and outside the UK, to make markets work well for consumers, businesses and the economy.
8. The CMA's statutory responsibilities, in so far as relevant to the matters that are the subject of this MoU, include:
  - (a) investigating where there may be breaches of the competition prohibitions; and
  - (b) conducting market studies and market investigations where there may be competition and consumer problems.
9. In connection with its statutory responsibilities, the CMA will cooperate with sectoral regulators to promote effective competition and support the use of their powers, including their powers to apply the competition prohibitions, in the interests of competition for the benefit of consumers.

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<sup>3</sup> FCA (2018), [The FCA's concurrent competition enforcement powers for the provision of financial services \(FG15/8\)](#).

## *Role of the FCA*

10. The FCA is established under FSMA as the market conduct regulator in the financial services sector. It is also responsible for the prudential supervision of firms that are not regulated by the Prudential Regulation Authority (PRA). In addition, it is responsible for the regulation of claims management services in Great Britain.
11. The FCA has a single strategic objective which is to ensure that the relevant markets function well. It also has three operational objectives:
  - (a) to secure an appropriate degree of protection for consumers;
  - (b) to protect and enhance the integrity of the UK financial system; and
  - (c) to promote effective competition in the interests of consumers.

## **Aims**

12. The FCA acquired competition powers in relation to the provision of financial services, which are exercisable concurrently with the CMA, in April 2015 thereby bringing the FCA in line with the other sectoral regulators, which already had powers exercisable concurrently with the CMA in those sectors for which they have responsibility. In April 2019, it also obtained concurrent competition powers in relation to the provision of claims management services in Great Britain.<sup>4</sup>
13. The Enterprise and Regulatory Reform Act 2013, as well as establishing the CMA, made provision for the better working of the CMA's and the sectoral regulators' concurrent powers in the regulated sectors; specifically, the act: 'strengthens the role of the CMA and enhances the emphasis on early and proper consideration of the use of anti-trust powers (under Part 1 of the CA 1998 [ie the competition prohibitions]) by the sector regulators.'<sup>5</sup>
14. It is one of the strategic goals of the CMA, announced on its establishment on 1 October 2013, to extend the frontiers of competition into new areas, including by working with sectoral regulators to ensure fuller use of competition law and policy in sectoral markets.<sup>6</sup>
15. The government's strategic steer to the CMA, issued on 1 December 2015, says that the CMA should build 'a strong dialogue with sectoral regulators

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<sup>4</sup> These changes were introduced by the Financial Guidance and Claims Act 2018.

<sup>5</sup> [Enterprise and Regulatory Reform Act 2013 Explanatory Notes](#), paragraph 370.

<sup>6</sup> Statement by Alex Chisholm, Chief Executive of the CMA, [CMA mission and strategy](#), 1 October 2013.

using the UKCN to ensure that the overall competition regime is coordinated and regulatory practices complement each other.<sup>7</sup>

16. The sectoral regulators<sup>8</sup> and the CMA, working together in the UKCN established in 2013 (with Monitor having observer status), declared that: 'The mission of the UKCN will be to promote competition for the benefit of consumers and to prevent anti-competitive behaviour both through facilitating use of competition powers and development of pro-competitive regulatory frameworks, as appropriate.'<sup>9</sup>
17. The CMA and the FCA seek to use their powers to achieve more competitive outcomes in the financial services industry in the UK for the benefit of consumers so as to make the financial services markets in the UK work well for consumers of financial services, businesses in the sector and businesses that use those services and the economy in which those services play an essential part. The CMA and FCA are similarly working towards these outcomes in relation to the provision of claims management services in Great Britain. It is the view of the CMA and the FCA that such competitive outcomes can be achieved by various tools including: their concurrent competition law powers under the competition prohibitions and market provisions; their concurrent powers under specific consumer protection legislation; and the CMA's merger control functions. However, the CMA and the FCA recognise that some of these outcomes can also be achieved through the FCA's sector specific tools such as conduct regulation, supervision and enforcement.
18. This MoU aims to further the attainment of these objectives, and to make the changes introduced by the Enterprise and Regulatory Reform Act 2013, the Financial Services (Banking Reform) Act 2013 and Financial Guidance and Claims Act 2018 work effectively, maximising the complementary skills of the CMA and the FCA, including through:
  - (a) promoting cooperation and coordination between the CMA and the FCA when dealing with cases of suspected anti-competitive behaviour for which they have concurrent powers;

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<sup>7</sup> Department for Business, Innovation and Skills, *Strategic steer for the Competition and Markets Authority*, in Annex A to the *Government's response to the Consultation on the Strategic Steer to the CMA*, 1 December 2015, page 11.

<sup>8</sup> The FCA has been a full member of the UKCN since the UKCN's formation even though it did not have concurrent powers. It was included as it has had a statutory duty to promote effective competition in the interests of consumers since its formation in April 2013 and it was due to acquire concurrent powers in April 2015.

<sup>9</sup> UKCN (2013), [Statement of intent](#).

- (b) promoting cooperation and coordination between the CMA and the FCA when dealing with market studies and market investigation references for which they have concurrent powers;
- (c) facilitating the efficient and effective handling of cases of suspected anti-competitive behaviour within the FCA's concurrent jurisdiction;
- (d) avoiding duplication of activity, wherever possible; and
- (e) ensuring transparency as to the respective roles of the CMA and the FCA for individuals and consumers affected.

### ***General cooperation***

19. In addition to the provisions for cooperation between the CMA and the FCA specific to particular powers of the CMA and the FCA, as set out in this MoU and elsewhere, the CMA and the FCA are committed to the following general principles and practices for cooperation between themselves in respect of the sectors for which the FCA has responsibility.
20. Officials of the CMA and the FCA will meet and communicate, at appropriate levels of seniority, to discuss matters of mutual interest, both through the UKCN and bilaterally. A framework for such meetings will, as far as possible, be determined in advance so as to ensure attendance at the appropriate level and expertise.
21. The CMA and the FCA will, in respect of the FCA's concurrent jurisdiction, always consult each other:
  - (a) before the initial exercise of concurrent competition law powers in all cases where it appears that they have concurrent jurisdiction and where there are reasonable grounds for suspecting an infringement of the competition prohibitions; and
  - (b) before launching a market study (in the FCA's case, whether under the Enterprise Act 2002 or FSMA).
22. Where either the CMA or the FCA exercises its concurrent powers, the CMA and the FCA will, to the extent permitted by law, engage with each other in open dialogue and by sharing relevant information as appropriate. This engagement may include attendance at internal meetings held by the investigating authority (ie the authority to which a case is allocated) by the supporting authority (ie the other authority which would be competent to exercise concurrent powers in relation to the case), in order to discuss the case as envisaged at paragraph 3.31 of the concurrency guidance. The



supporting authority will not generally attend the investigating authority's constitutional decision-making meetings, meetings of governance bodies or meetings with external parties such as those under investigation or complainants. Attendance by the supporting authority at any meeting is at the discretion of the investigating authority, but requests to attend should be considered by the investigating authority in the spirit of cooperation underpinning the concurrency regime.

23. The CMA and the FCA will consult each other at an early stage on any issues that might have significant implications for the other. For example, where the CMA undertakes a market study which relates to a sector other than one in the FCA's concurrent jurisdiction but which may have a significant impact on any sector in the FCA's concurrent jurisdiction, the CMA will inform the FCA and share appropriate information relating to that market study with the FCA to the extent permitted by law.
24. Within the spirit of broader collaboration for the purposes of the promotion of competitive outcomes, the CMA and the FCA will commit to discuss and share other relevant information, where legally permissible to do so.

## **Part A – Cooperation in relation to the competition prohibitions (Competition Act 1998 and Articles 101 and 102 of the Treaty on the Functioning of the European Union)**

### ***Case allocation***

#### *Basis of allocation*

25. The CMA and the FCA will endeavour to reach agreement on which authority will exercise its concurrent competition powers in respect of any particular case, under regulation 4(2) of the concurrency regulations. They will do so in a spirit of constructiveness and cooperation, while acknowledging the CMA's ultimate powers under regulations 5 and 8 of the concurrency regulations.
26. Their determination of which authority will exercise its powers will be based on assessing which of them is better placed to exercise those powers, having regard to the factors set out in paragraph 3.22 of the concurrency guidance. The CMA and the FCA envisage that other factors may appear relevant in the light of practical experience and that, if so, such factors may be chosen to supplement or supplant the factors set out in paragraph 3.22 of the concurrency guidance.

#### *Procedure for allocation*

27. Where either the CMA or the FCA has decided, on the basis of information in its possession, that there are reasonable grounds for suspecting that one of the competition prohibitions has been infringed (the reasonable suspicion test)<sup>10</sup> in relation to the FCA's concurrent jurisdiction it will disclose to the other (ie the receiving authority) sufficient information:
  - (a) to enable the receiving authority to understand the basis on which the disclosing authority has decided that the reasonable suspicion test is met; and
  - (b) for there to be an informed discussion on which authority (if either) is best placed to proceed in respect of the case.
28. In practice, it may be helpful for the CMA and the FCA to have discussed the case prior to such a decision having been reached, subject to paragraph 41 below. The disclosing authority will provide the information described under paragraph 27 within ten working days after it has decided that the reasonable

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<sup>10</sup> As provided in [section 25](#) of the Competition Act 1998.

suspicion test is met, whether or not it proposes to exercise concurrent powers.<sup>11</sup>

29. Within seven working days from receipt of this information, the receiving authority will respond in writing, setting out its initial view on the case and how it should be allocated and identifying any further information which it requires.
30. The CMA and the FCA will endeavour to agree which authority will exercise its concurrent competition powers in relation to the case, as provided for in regulation 4(2) of the concurrency regulations, as soon as possible and in any event no later than one month from disclosure of the information described under paragraph 27. Other than in exceptional circumstances (which shall be set out in writing), the CMA will initiate the procedure set out in regulation 5 of the concurrency regulations if agreement is not reached within two months of the disclosing authority first receiving sufficient information in connection with a complaint to enable it to decide that the reasonable suspicion test is met.
31. The procedure for agreeing the transfer of a case that is already in progress from the CMA to the FCA, or from the FCA to the CMA, is as set out in regulation 7 of the concurrency regulations and in paragraph 3.32 of the concurrency guidance.
32. The procedure for the CMA to direct the transfer to itself from the FCA of a case that is already in progress is as set out in regulation 8 of the concurrency regulations.

#### *Implications of allocation*

33. Any agreement or determination as to case allocation, under regulations 4, 5, 7 or 8 of the concurrency regulations, shall be notified to the person who has provided the information resulting in the case (for example, the person making a complaint), and so far as appropriate and lawful to any other affected person, by the authority which is exercising its concurrent competition powers in relation to the case, as soon as reasonably practicable.
34. Case allocation determines which of the CMA and the FCA is to exercise concurrent functions and make any decisions under the competition prohibitions. The CMA or FCA will be publicly identified as having such responsibility if and when any such investigation is announced. The CMA and the FCA envisage that, whichever authority has responsibility for a particular case, they and their officials will work cooperatively with each other on the

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<sup>11</sup> As provided in [regulation 9](#) of the concurrency regulations.

case, pooling their expertise including as described in paragraphs 50 to 59 of this MoU and in paragraphs 3.33 to 3.35 of the concurrency guidance.

## ***Sharing information***

### *Principles of information sharing*

35. The effective sharing of information between the CMA and the FCA is fundamental to the successful exercise of their concurrent competition powers. It is needed both for the appropriate allocation of cases, as described in paragraphs 27 to 32 of this MoU, and for the successful handling of cases once allocated to make optimal use of the complementary experience and expertise of the two authorities.
36. The CMA and the FCA are committed, in addition to their legal obligations to share information (set out in regulation 9 of the concurrency regulations), to open dialogue and continuing liaison, both bilaterally and through the UKCN, with a view not only to handling specific cases but to promoting competition for the benefit of consumers in the sectors within the FCA's concurrent jurisdiction.

### *Information sharing mechanism – general liaison*

37. The CMA and the FCA recognise the importance of meeting regularly to share information on matters relevant to competition in the FCA's concurrent jurisdiction, and to keep each other abreast of relevant work which they are considering or currently undertaking.
38. The CMA and the FCA will meet regularly at multiple levels, bilaterally and through the UKCN.
39. The CMA and the FCA will each designate in its organisation a relationship manager at official level to take responsibility for relations between the two authorities. In each authority, the relationship manager's responsibilities will include (but will not be limited to):
  - (a) maintaining an overview of joint projects between the two authorities and matters of mutual interest;
  - (b) maintaining an overview of the authority's contacts from all areas of joint working and mutual interest; and
  - (c) holding meetings with the relationship manager in the other authority from time to time (whether bilaterally or in the context of the UKCN) to identify

potential new issues, with a view to circulating information to appropriate individuals within each organisation.

40. The existence of relationship managers does not in any way preclude direct communication between other staff at the CMA and the FCA.
41. For the purposes of sharing information pursuant to paragraph 27, ie in circumstances where the reasonable suspicion test is met, such information will be shared by the disclosing authority to the extent permitted by law and whether or not it proposes to exercise concurrent powers.<sup>12</sup> Where disclosure would be appropriate and permitted by law, the CMA and FCA may also share information regarding potential infringements of the competition prohibitions in advance of having reached a view as to whether the reasonable suspicion test is met. In circumstances where either the CMA or FCA has taken the view that a matter is not an administrative priority, irrespective of whether a view has been reached on whether the reasonable suspicion test is met, each may share the details of the matter with the other, or with any other authority which would be able to exercise concurrent competition powers in relation to that matter, to the extent permitted by law. Where leniency information is being shared under this paragraph, special considerations apply, as set out in paragraphs 47 and 48.

#### *Information sharing mechanism – handling specific cases*

42. The procedures for information sharing for the purpose of case allocation shall be as set out in paragraphs 27 to 29 and 35 to 49 of this MoU.
43. When either the CMA or the FCA is exercising its powers in respect of the competition prohibitions in a particular case in the FCA's concurrent jurisdiction, each of them will share with the other any of the following information in its possession (to the extent permitted by law and subject to the confidentiality obligations in paragraphs 46 to 48 of this MoU):
  - (a) as a minimum, the matters referred to in regulation 9(1)(b) – (j) of the concurrency regulations, and in paragraph 3.49 of the concurrency guidance, complying with the time limits specified in paragraph 3.49;
  - (b) other information which it reasonably believes to be relevant or helpful to the other in the conduct of the case; and

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<sup>12</sup> For the avoidance of doubt, this does not entail an obligation to inform the other party if the regulator is carrying out general monitoring activity, where there is no consideration of exercising its concurrent powers.

- (c) in the case of the authority which is exercising the powers, reports to the other on the progress of the case, of sufficient frequency and detail to enable the other to be appropriately informed; the means and frequency of such reporting will be decided on a case-by-case basis and in the light of experience as this enhanced framework of collaboration and its supporting arrangements develop over time.

*Information sharing mechanism – for know-how purposes*

44. The CMA will maintain on its webpages a central database of decisions taken in cases under the competition prohibitions, with a view to having an accessible body of know-how that will help ensure the effective and consistent application of competition law. The CMA and the FCA will, to the extent permitted by law, contribute information to that in the way best calculated to achieve that objective.
45. In any event, the CMA will report on cases in the regulated sectors under the competition prohibitions in the annual concurrency report which it is required under statute to issue. Further provisions on the annual concurrency report are in paragraphs 60 to 62 of this MoU.

*Information sharing – confidentiality constraints*

46. Any disclosure of information under paragraphs 27 to 29 and 35 to 45 of this MoU, and any use by the recipient of such information, shall only be to the extent permitted by law, including by reference to the provisions of Part 9 of the Enterprise Act 2002, relevant sector-specific legislative provisions and any other provisions relating to the disclosure, handling and use of information (such as the Data Protection Act 1998 and section 118 of FSMA, to the extent relevant).
47. Prior to disclosing information to each other, the CMA and the FCA will not generally give the person to whom the information relates prior notice of its intention to make the disclosure. However, if the CMA or the FCA consider it necessary or appropriate to pass leniency information to each other (or to another UK authority with concurrent powers), the transmitting authority will inform the applicant or its legal adviser first. Leniency information for the purposes of this MoU is any information which came into the possession of any of the CMA, its predecessors, the FCA or any other public authority as a direct or indirect result of having been provided in the context of an application for leniency. It includes information obtained by the transferring authority as a result of investigative measures resulting directly or indirectly from an application for leniency.

48. In addition to the general provisions referred to in paragraph 46, where the FCA or the CMA receives leniency information from the other (or from another UK authority with concurrent powers) for the purpose of applying the competition prohibitions or, in the case of the CMA, the cartel offence under section 188 of the Enterprise Act 2002, that information will not be used for any other purpose. This restriction on use also applies to any information obtained by the receiving authority as a result of investigative measures relating to the competition prohibitions or the cartel offence following the receipt of leniency information from the other authority. This does not affect the use that may be made by the CMA or the FCA of information received from other sources, including but not limited to disclosures to the FCA under Principle 11 of the FCA's Principles for Business, Principle 4 of the FCA's Statements of Principle for Approved Persons, Rule 4 of the FCA's Senior Manager Conduct Rules,<sup>13</sup> or if the leniency applicant's consent is obtained.<sup>14</sup> Where the provision of leniency information to either the CMA or the FCA affords or might, under certain conditions, afford the leniency applicant, its subsidiaries or its employees protection from sanctions (including a reduction in penalties) under the leniency programme operated by that authority and that information has been passed to another authority, the receiving authority shall afford the leniency applicant, its subsidiaries or its employees no lesser protection.
49. Where an application for leniency is made to the CMA by a firm active in the FCA's concurrent jurisdiction, the CMA will remind the applicant that it may have obligations to notify the FCA of its conduct under Principle 11 of the FCA's Principles for Business, Principle 4 of the FCA's Statements of Principle for Approved Persons, or Rule 4 of the FCA's Senior Manager Conduct Rules. When leniency information is shared with the FCA, the FCA may also contact the applicant to let it know it is aware of the leniency application and remind the applicant of any obligations it may have to notify relevant conduct, under the principles or rule mentioned above.<sup>15</sup> The FCA will have due regard for the need for appropriate handling of such contacts to minimise prejudice to the conduct of any ongoing or subsequent investigation.

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<sup>13</sup> As set out in the FCA [Handbook](#)

<sup>14</sup> The use restriction in this paragraph is intended to govern the use of leniency information in the context of the concurrency arrangements. It is not intended to prevent the disclosure of such leniency information by either one of the CMA or the FCA to the other (to the extent permitted by Part 9 of the Enterprise Act 2002 and in accordance with [Leniency and no-action applications in cartel cases: OFT1495](#)) for purposes other than the application of the competition prohibitions or the cartel offence. However, any such disclosure of leniency information would only be likely to be justified in exceptional circumstances, given the strong public interest in maintaining the incentives for undertakings and, in the case of the cartel offence, individuals to apply for leniency.

<sup>15</sup> The FCA and CMA acknowledge that OFT1495 applies, in particular paragraphs 3.24–3.28, with respect to maintaining confidentiality.

### ***Pooling resources***

50. Paragraph 22 above, and the concurrency guidance provide for support to be provided by the supporting authority to the investigating authority when it is exercising its concurrent powers in a case. The CMA and the FCA will endeavour, so far as is reasonably practicable and permitted by law, and in the light of their respective ongoing priorities and resource availability at the time, to share their resources with each other in the interests of the effective enforcement of competition law in the FCA's concurrent jurisdiction, and more generally the promotion of competition for the benefit of consumers in those sectors, and to ensure that their resources and expertise are used most efficiently for that purpose.
51. As a consequence, where it has been agreed or determined that one of the authorities is to exercise its concurrent competition powers in relation to a case, that authority will, to the extent that there are resources available, receive appropriate practical assistance and support from the other in the handling of the case, as agreed on a case-by-case basis.
52. Such support and assistance may include the provision of training or practical know-how and expertise by one authority to the other where appropriate to enable the authority exercising its concurrent competition powers in the case to carry out its statutory functions effectively (for example in relation to conduct of site visits).

### ***Secondments of staff***

53. One means of the practical assistance and support that might be given, as referred to in paragraphs 50 and 51 of this MoU, is the secondment of staff, in accordance with regulation 10 of the concurrency regulations and paragraphs 3.33 and 3.34 of the concurrency guidance.
54. The CMA and the FCA are fully committed to the idea of secondments for this purpose, and will endeavour to meet each other's requests for secondments to the extent that they are appropriate and resources permit; this may include making provision for any secondee to be available to work for part of his or her time at his or her existing employer during the course of the secondment, for example on such cases that are in progress.
55. Requests for secondments should be made by the relationship manager of one authority to the relationship manager of the other, setting out the following information:
  - (a) The number of secondees required.



- (b) The period for which each one is required.
  - (c) The level of seniority of each one.
  - (d) The nature of the expertise or experience of each one.
  - (e) The proposed payment arrangements.
  - (f) A brief explanation of why the requirement or requirements cannot adequately be met by deployment of staff from within the requesting authority.
56. To the extent that the recipient of a request for a secondment made under paragraph 55 of this MoU refuses that request or accedes to it on terms that are materially different from those requested, the recipient shall give reasons.
57. The CMA and the FCA will develop appropriate arrangements for the pooling and secondment of staff. Such arrangements will have regard to the resource constraints of both parties and such calls for staff, therefore, will be made in reasonable time and with sufficient warning to enable appropriate resource planning, management of other work commitments and appropriate sign-off procedures within each authority.

### ***Other mutual support***

58. In addition to the sharing of information, expertise, experience and the secondment of staff, the CMA and the FCA are fully committed to providing each other with more informal forms of support to enable them to carry out their competition law functions in relation to the FCA's concurrent jurisdiction – in each case to the extent that it is appropriate and permitted by law, and that resources permit – including (but not limited to):
- (a) answering specific queries from time to time;
  - (b) providing information or views on a specific sector or market, or an area of competition law or policy; and
  - (c) providing training on a specific sector or market, or an area of competition law or policy.
59. Such support may be requested and provided in connection with a specific case or with the promotion of competition more generally. In this regard, both the CMA and the FCA will act reasonably, including by providing sufficient time and information for requests for support to be responded to fully and effectively and for the relevant staff to be engaged.

## ***Annual concurrency report***

60. The CMA is required by statute to publish a report every year, starting after its first year of operation in 2014/15,<sup>16</sup> containing an assessment of how the concurrency arrangements between the CMA and the sectoral regulators, as regards both the competition prohibitions and the market provisions, have operated during the year. This MoU refers to that report as the annual concurrency report. There is further provision on the annual concurrency report in paragraphs 3.55 to 3.62 of the concurrency guidance.
61. The CMA will consult, and cooperate with, the FCA and with other sectoral regulators in preparing the annual concurrency report. In connection with this, the CMA will:
- (a) prepare a draft of the annual concurrency report that it will send to the FCA and other sectoral regulators seeking comments or suggestions on the content or conclusions of the annual concurrency report and giving them adequate time to comment or make suggestions;
  - (b) take account of any comments or suggestions it receives from the FCA and other sectoral regulators and the CMA may seek further clarification on those comments or suggestions as appropriate;
  - (c) prepare a final version of the annual concurrency report for publication that takes account of its consultation of the FCA and other sectoral regulators as appropriate; and
  - (d) make the annual concurrency report available on the CMA webpages.
62. The FCA will cooperate with the CMA in the preparation of the annual concurrency report including (but not limited to) by way of:
- (a) providing information and data on general market conditions and on the application of the competition prohibitions and the market provisions to the sectors within the FCA's concurrent jurisdiction;
  - (b) responding to reasonable requests for information and data; and
  - (c) providing to the CMA any comments and suggestions it may have in connection with the process described in paragraph 61 of this MoU;
- in each case promptly so as to facilitate the timely production and publication of the annual concurrency report.

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<sup>16</sup> Enterprise and Regulatory Reform Act 2013 [Schedule 4](#) paragraph 16.

### ***Voluntary redress schemes***

63. In cases relating to investigations under the competition prohibitions in the FCA's concurrent jurisdiction, both the CMA and the FCA have the power to approve voluntary redress schemes. When either authority proposes to exercise these powers, it shall liaise with the other authority as appropriate and will have regard to its own guidance.<sup>17</sup>

### ***Short form opinions***

64. The CMA shall inform the FCA following an initial enquiry for a short form opinion relating to the FCA's concurrent jurisdiction. Where the CMA is considering providing such an opinion, it will discuss with the FCA before deciding to do so. If the CMA then decides to produce an opinion, it will engage with the FCA, the nature and degree of that engagement to be considered on a case-by-case basis, having regard, in particular, to the extent to which the opinion has a multi-sector rather than single-sector dimension. In all cases, the CMA will give the opportunity to provide comments on a draft opinion.

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<sup>17</sup> The CMA's guidance on the [approval of voluntary redress schemes](#) (CMA40) states in footnote 7: 'The CMA expects that regulators will take this CMA guidance into account when producing their own guidance on the approval power.'

## **Part B – Cooperation in relation to the market provisions: market studies and market investigations (Enterprise Act 2002)**

### ***How concurrency works under the market provisions***

65. The FCA has the power, concurrently with the CMA, to carry out market studies, to make market investigation references, agree undertakings in lieu of a reference and make recommendations to the government in relation to the FCA's concurrent jurisdiction under Part 4 of the Enterprise Act 2002 (as do other sectoral regulators in relation to the sectors for which they are responsible).
66. Under the Enterprise Act 2002, the CMA and the FCA may, in relation to the FCA's concurrent jurisdiction, undertake market studies, and may make market investigation references to the Chair of the CMA for the constitution of a CMA group to conduct an in-depth market investigation into single or multiple markets for goods or services in the UK. The purpose of these investigations is to examine the market(s) and (where required) implement appropriate remedies where the CMA determines that the structure of the market(s) or the conduct of the suppliers or customers is harming competition.
67. When making a reference, the CMA or the FCA, as applicable, must have reasonable grounds for suspecting that any feature or combination of features of a market or markets in the UK prevents, restricts or distorts competition in relation to the supply or acquisition of any goods or services in the UK (or in a part of the UK).
68. The cooperation between the CMA and the FCA provided for in this Part B shall not extend to conduct that could reasonably be expected to impair the impartiality or the fairness of the CMA panel in conducting market investigations.

### ***Super-complaints***

69. The CMA<sup>18</sup> has an obligation to respond to super-complaints about any feature, or combination of features, of a market in the UK for goods or services which is or appears to be significantly harming the interests of consumers. The FCA<sup>19</sup> has a similar obligation for super-complaints relating to the FCA's concurrent jurisdiction.

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<sup>18</sup> [Section 11](#) of the Enterprise Act 2002.

<sup>19</sup> [Sections 234C](#) and [234E](#) of FSMA.

70. The coordination of the CMA's and the sectoral regulators' super-complaint duties will be based on policies agreed and applied through the UKCN.
71. Subject to paragraph 70 above, the FCA intends where permitted by law to:
- (a) inform the CMA of super-complaints received under section 234C of FSMA;
  - (b) inform the CMA of formal references received under section 234D of FSMA which could raise matters that could be considered by the CMA by way of a market study and/or under section 131 of the Enterprise Act 2002;
  - (c) discuss with the CMA those super-complaints where the FCA considers that action by the CMA under any of the CMA's powers is more appropriate than regulatory action under FSMA, bearing in mind the FCA's operational objective in relation to promoting effective competition in the interests of consumers set out in FSMA;
  - (d) refer to the CMA super-complaints identifying competition issues which the FCA cannot address under its powers; and
  - (e) inform the CMA of super-complaints which identify issues in the FCA's concurrent jurisdiction which the FCA believes may have consequences for related non-financial services and non-claims management services markets.
72. Subject to paragraph 70 above, the CMA intends to:
- (a) inform the FCA of super-complaints received under section 11 of the Enterprise Act 2002 where they relate to the FCA's concurrent jurisdiction;
  - (b) discuss those super-complaints with the FCA where the CMA considers that regulatory action under FSMA may be more appropriate than action under any of the CMA's powers, bearing in mind the CMA's mission to make markets work well in the interests of consumers, businesses and the economy;
  - (c) refer to the FCA super-complaints concerning the FCA's concurrent jurisdiction to which the CMA cannot respond under its powers; and
  - (d) inform the FCA of super-complaints which identify competition issues in markets not within the FCA's concurrent jurisdiction, which the CMA believes may have consequences for the FCA's concurrent jurisdiction.

### ***Mutual consultation***

73. The FCA and the CMA have a duty to consult each other before exercising concurrent functions under the market provisions.<sup>20</sup> The FCA will also consult the CMA before launching a market study under FSMA.

### ***Sharing information***

74. The provisions of paragraphs 37 to 41, 43 (excluding 43(a)) and 45 of this MoU apply to information sharing under the market provisions as they do under the competition prohibitions.

### ***Pooling resources***

75. The provisions of paragraph 50 to 59 of this MoU apply to pooling resources under the market provisions as they do under the competition prohibitions.
76. Where the CMA and the FCA intend to pool resources in order to exercise powers under the market provisions of the Enterprise Act 2002, they shall, at the outset of any such project, discuss the arrangements for how they will pool resources and work jointly.

### ***Annual concurrency report***

77. The provisions of paragraphs 60 to 62 of this MoU apply under the market provisions as they do under the competition prohibitions.

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<sup>20</sup> Section [234\(7\)](#) of FSMA.

## **Part C – Cooperation in relation to competition scrutiny (Financial Services and Markets Act 2000)**

### ***Interaction between the FCA and the CMA under FSMA***

78. For the purposes of this Part C and pursuant to section 140B of FSMA, the CMA gives ‘section 140B advice’ if:
- (a) it gives advice, under section 7 of the Enterprise Act 2002, to the FCA and that advice states that one or more of the things listed in paragraph 79 below may cause or contribute to the prevention, restriction or distortion of competition in connection with the supply or acquisition of any goods or services in the UK or a part of the UK, or might be expected to do so in the future; or
  - (b) it publishes a report, under section 136 of the Enterprise Act 2002, which contains a decision that one or more of the things listed in paragraph 79 below may cause or contribute to the prevention, restriction or distortion of competition in connection with the supply or acquisition of any goods or services in the UK or a part of the UK, or might be expected to do so in the future, and the CMA recommends that any action be taken by the FCA.
79. The things mentioned in paragraph 78 are:
- (a) a regulating provision or practice of the FCA;
  - (b) two or more regulating provisions or practices (of the FCA or of both the FCA and PRA);
  - (c) a particular combination of regulating provisions or practices (of the FCA or of both the FCA and PRA); or
  - (d) a feature or combination of features of one or more markets in the UK that could be dealt with by regulating provisions or practices (of the FCA or of both the FCA and PRA).
80. The CMA will consult with the FCA before officially publishing section 140B advice, and will provide the FCA with guidance as to how it intends to use this power.
81. Under section of 140G of FSMA, the FCA must, within 90 days after the day on which it receives section 140B advice from the CMA, publish a response stating how it proposes to deal with the advice and in particular:

- (a) whether it has decided to take any action, or to take no action, in response to the advice;
- (b) if it has decided to take action, what action it proposes to take; and
- (c) its reasons for its proposals.