



HM Treasury

Financial Services (Banking Reform) Bill

Government Amendments: FCA Concurrent Powers

Briefing for Peers

October 2013

Overview

The CEO of the FCA wrote to the Chancellor on 5 August 2013, with the approval of the FCA Board, to request that the competition objective given to the FCA by the Financial Services Act 2012 be supported by giving competition law powers to the FCA contained in Part 1 of the Competition Act 1998 and Part 4 of the Enterprise Act 2002. The FCA requested that this addition to the FCA's suite of powers be implemented in April 2015 in order to allow time to build the necessary expertise.

The Chancellor wrote back to the CEO of the FCA on 27 August. He agreed that the FCA was equipping itself with competition skills and expertise and that such powers would strengthen the FCA's ability to ensure competitive banking markets that deliver good consumer outcomes. In light of these considerations he set out the Government's intention to complete an informal consultation over the summer and to consider providing the FCA with these powers through amendments to the Banking Reform Bill at Lords Committee stage.

New Government Amendment: FCA concurrent competition powers

Providing the FCA with these competition powers brings it in line with other sector regulators, and further strengthens its ability to ensure competitive banking markets that deliver good consumer outcomes.

The FCA will be equipped with the following competition powers which they will operate concurrently with the central competition authority, the Competition and Markets Authority (CMA):

- (1) **Competition Act 1998 (CA98) enforcement powers** used to address restrictive practices engaged in by companies operating in the UK that distort, restrict or prevent competition – for example ordering that offending agreements or conduct be stopped. Businesses that break the law can be fined up to 10 per cent of their worldwide turnover.
- (2) **Power under the Enterprise Act 2002 to carry out market studies and make references to the Competition and Markets Authority.**

Equipping the FCA with these powers will bring a range of benefits: providing the FCA with a greater range of powers will strengthen the FCA's ability to ensure competitive banking markets in the interests of consumers; the ability to carry out market studies and make references to the Competition and Markets Authority will enhance the

credibility of the FCA and make it easier for the FCA to persuade firms to alter their behaviour voluntarily; and providing the FCA with these competition powers will enable the FCA to become a member of the European Competition Network so they are better placed to engage with regulatory issues at a European level.

The clauses provide the FCA with the new competition powers and specify the markets in which they may be exercised. They also make other provisions, including around sharing information with the CMA and a duty to consider the use of Competition Act 1998 powers before exercising certain powers in the Financial Services and Markets Act 2000.

The FCA's new competition powers will be exercisable concurrently with the CMA, and the clauses provide for co-ordination between the FCA and the CMA when they intend to exercise their competition functions.

Further Enquiries

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