

Monitor

Making the health sector
work for patients

Application of the Competition Act 1998 in the healthcare sector: guidance for providers



About Monitor

As the sector regulator for health services in England, our job is to make the health sector work better for patients. As well as making sure that independent NHS foundation trusts are well led so that they can deliver quality care on a sustainable basis, we make sure: essential services are maintained if a provider gets into serious difficulties; the NHS payment system promotes quality and efficiency; and patients do not lose out through restrictions on their rights to make choices, through poor purchasing on their behalf, or through inappropriate anti-competitive behaviour by providers or commissioners.

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Foreword

Monitor's job as regulator is to protect and promote the interests of patients by ensuring that the whole healthcare sector works for their benefit. We recognise that providers and commissioners have challenging roles on the front line of healthcare: our philosophy is to help people do the right thing rather than punishing them for doing the wrong thing.

This guidance has been written to help you, as healthcare providers, make the best decisions for patients. It is one of a set of documents explaining how we apply competition rules, first published in March 2013 for a 12-week public consultation. We are grateful for all the support and engagement we received to help us develop our guidance, and we have acted on feedback.¹

The full set of finalised guidance comprises this document, alongside:

- [how we approach market investigation references \(under Part 4 of the Enterprise Act 2002\)](#)
- [how we apply the choice and competition conditions of the licence for providers of NHS healthcare services.](#)

As an extra aid, we have published (and will continue to publish) [hypothetical scenarios](#) which help illustrate how the choice and competition conditions of the provider licence and competition law work in practice.

We have also previously published related guidance both to [support NHS providers considering transactions](#)² and to assist [commissioners using the Procurement, Patient Choice and Competition Regulations](#).³

To help you use this guidance most fully and identify when it might be necessary to work with us, we briefly explain what we mean by choice and competition and set out how and why we are working in this area.

Our role in choice and competition

Choice and competition have existed in the NHS in England for many years and are powerful tools for improving the quality of care provided to patients. They enable patients and commissioners to select the providers which offer quality services that best meet the needs of patients.

¹ Please see the consultation response document at <https://www.gov.uk/government/publications/nhs-healthcare-providers-working-with-choice-and-competition>

² <https://www.gov.uk/government/publications/supporting-nhs-providers-considering-transactions-and-mergers>

³ <https://www.gov.uk/government/publications/procurement-patient-choice-and-competition-regulations-guidance>

Choice and competition are governed by specific rules which seek to make sure that:

- they operate in the best interests of patients
- procurement decisions by commissioners achieve the best results
- all providers are treated fairly
- no one behaves anti-competitively to the disadvantage of patients.

Our role is to make sure that this all works the way it is meant to: that the rules are applied taking into account the specific circumstances of the health sector, and above all that they are applied in the best interest of patients.

We take this responsibility seriously. We will enforce the competition rules affecting healthcare services to ensure that they operate fairly in the interests of patients, and to help both NHS providers and NHS commissioners meet the needs of patients.

To achieve this, we will explain in documents like this one how any breach of these rules might have negative effects on patients, and how we expect our intervention to maintain or improve service quality or innovation, or deliver better value for money.

Introduction to this guidance

The Health and Social Care Act 2012 (the Health and Social Care Act) gives us concurrent (shared) powers with the Competition and Markets Authority (CMA)⁴ to enforce provisions of the Competition Act 1998 (CA98) and the Treaty on the Functioning of the European Union (TFEU) in relation to the provision of healthcare services in England. We refer to these laws as competition law in this document and this guidance explains how we will use these powers.⁵

By investigating anti-competitive behaviour, we will seek to ensure that patients have access to high quality healthcare services. Preventing anti-competitive behaviour also means that providers can compete in a fair environment. This helps to ensure that providers are rewarded based on the quality and value of services they provide, which may incentivise them to make long-term investments and to improve services further for patients.

⁴ The CMA replaced the Office of Fair Trading and Competition Commission on 1 April 2014. It is the UK's economy-wide competition authority responsible for ensuring that competition and markets work well for consumers.

⁵ This guidance is not a substitute for the TFEU nor for regulations made under it. Neither is it a substitute for European Commission notices and guidelines or a substitute for CA98 and the regulations and orders made under that Act. It should be read in conjunction with these legal instruments, Community case law and United Kingdom case law. Anyone in doubt about how they may be affected by the TFEU or CA98 should seek legal advice. This guidance reflects the views of Monitor at the time of publication and may be revised from time to time to reflect changes in best practice, legislation and the results of experience, legal judgments and research. It may in due course be supplemented, revised or replaced. Our website will always display the latest version of the guidance.

In applying our concurrent powers, we will draw on the approach of the CMA as set out in guidance (see [‘Competition Act 1998: CMA Guidance and Rules of Procedure for investigation procedures under the Competition Act 1998’](#)). The CMA has adopted certain guidance documents on CA98 that were previously published by the Office of Fair Trading (OFT) (see Annexe A to the guidance cited above). Unless stated, the OFT guidance we refer to in this document has been adopted by the CMA.

As we gain more experience in dealing with potential breaches of competition law we will update our guidance.

The rest of this guidance is structured as follows:

- our concurrent powers
- our investigation procedures in competition cases
- our enforcement powers in competition cases
- our approach to publishing decisions
- appeals against our decisions
- assessing anti-competitive practices in the health sector
- assessing abuse of dominance in the health sector
- glossary.

Our concurrent powers

Competition law prohibits:

- **Anti-competitive practices:** that is, agreements⁶ between undertakings, decisions by associations of undertakings and concerted practices that have the object or effect of preventing, restricting or distorting competition. The term undertaking is described in guidance: [‘Agreements and concerted practices’](#) (OFT 401) and [‘Assessment of market power’](#) (OFT 415), and also in the [glossary](#) in this document.

On the specific question of whether public bodies can be undertakings and subject to UK and European competition law, see [‘Public bodies and competition law: A guide to the application of the Competition Act 1998’](#) (OFT 1389). Not-for-profit organisations such as charities may be undertakings for

⁶ See the Chapter I prohibition contained in section 2(1) of CA98 which applies where trade within the UK may be affected and Article 101 of the TFEU which applies where trade between Member States may be affected.

the purposes of CA98 if they are carrying on some form of commercial or economic activity.⁷

- **Abuse of dominance:** that is, conduct⁸ by one or more undertakings which amounts to the abuse of a dominant position in a market.

For more detail later in this guidance, see [Anti-competitive practices](#) and [Abuse of dominant position](#).

Using our competition law powers, we can:

- impose interim measures to prevent significant damage⁹ or protect the public interest
- carry out investigations, both on our own initiative and in response to complaints, including requiring the production of documents and the provision of information, and searching premises
- impose financial penalties, taking account of the statutory guidance on penalties adopted by the CMA
- give and enforce directions to bring an infringement to an end
- accept commitments that are binding on an undertaking
- offer information and confidential informal advice on how the competition law prohibitions apply in relation to the provision of healthcare services in England
- publish written guidance in the form of an opinion where a case raises novel or unresolved questions about the application of Article 101, Article 102, the Chapter I prohibition and/or the Chapter II prohibition in the United Kingdom, and where we consider there is an interest in issuing clarification for the benefit of a wider audience.

Our concurrent powers to apply competition law are not limited to NHS-funded services but apply to all healthcare¹⁰ services in England.

⁷ For a practical example of the application of CA98 to charities see the OFT's decision CA98/05/2006 'Exchange of information on future fees by certain independent fee-paying schools' (20 November 2006).

⁸ See the Chapter II prohibition in section 18(1) of CA98 which applies if the dominant position is held within the UK and the conduct in question may affect trade within the UK; and Article 102 of the TFEU which applies to conduct within the internal market or a substantial part of it in so far as it may affect trade between member states.

⁹ Section 43 of the Enterprise and Regulatory Reform Act 2013 amended section 35(2)(a) of CA98 by replacing the current test for the imposition of interim measures of 'preventing serious, irreparable damage' with 'preventing significant damage'.

Our investigation procedures in competition cases

Allocation of cases

Both Monitor and the CMA can deal with cases relating to suspected anti-competitive conduct in relation to the provision of healthcare services in England.

Where it appears that we may have concurrent jurisdiction, the CMA and Monitor will always consult with each other before acting and cases will be investigated by the authority best placed to undertake the investigation. The Competition Act 1998 (Concurrency) Regulations 2014 set out the approach to allocating cases between Monitor and the CMA.

We will normally be responsible for any CA98 case that is principally concerned with matters relating to the provision of healthcare services for the purposes of the NHS in England.¹¹ However, we may nevertheless agree with the CMA that the CMA shall act in a case.

The types of cases that might be investigated by the CMA rather than Monitor are cases involving the provision of goods rather than healthcare services, or cases not principally concerned with healthcare services. In each case that falls within our concurrent jurisdiction, we will consider whether we are the best placed authority to conduct the investigation. The factors to be considered in determining which authority deals with the matter will include securing the maximum benefit for healthcare service users, the sectoral knowledge of the authorities, whether the case affects other sectors and the authority's experience of dealing with the parties or similar issues which may be involved in the proceedings.

Prioritisation principles

We expect to become aware of potential breaches in a number of ways: for example, through complaints from third parties, intelligence from another regulator or authority, facts that emerge from our current or completed cases and reviews, or through other information we receive in our role as sector regulator.

When we become aware of a possible breach, we will consider how to proceed in accordance with our prioritisation principles set out in our ['Enforcement guidance'](#).

As part of this process, we will consider whether the case meets the thresholds set in CA98 for us to have the power to investigate. We can investigate when there are

¹⁰ Section 64(3) of the Health and Social Care Act defines 'health care' as all forms of health care provided for individuals, whether relating to physical or mental health.

¹¹ The CMA will not be able to allocate or transfer a case to a regulator other than Monitor unless it is satisfied that the case is not principally concerned with matters relating to the provision of healthcare services for the purposes of the NHS in England.

reasonable grounds for suspecting that Article 101, Article 102, the Chapter I prohibition and/or the Chapter II prohibition of CA98 have been infringed.

The prioritisation principles set out in our '[Enforcement guidance](#)' explain how we decide which course of action is appropriate in each case. We expect to have regard to factors such as the likely direct and indirect benefits to patients, the likelihood of success, and the likely cost of resources needed to take that particular action. We intend to apply the principles to decisions not only about whether to begin a case, but also whether to continue with a case once it is under way. We will also apply them to decisions about which course of enforcement action to take. We apply the principles to ensure we make the best use of the resources available to us.

Relationship between competition law and the choice and competition licence conditions

Some types of behaviour may fall within the scope of the provider licence conditions¹² on choice and competition as well as competition law. We will decide at an early stage which powers we think are most appropriate and will advise interested parties accordingly. Our general approach is that we will use the most effective, efficient and expeditious solution where we find a problem. We have set out [separate guidance on how we intend to take action under the provider licence](#).

Making a complaint

We may begin an investigation into a possible breach of competition law on our own initiative or in response to a complaint. A complaint should be supported by as much factual information as possible so that we can make an accurate and prompt assessment as to whether there are reasonable grounds for suspecting a breach of competition law. All complaints should also contain (as a minimum) the information set out below. General allegations that a complainant considers conduct to be inconsistent with competition law will not typically be sufficient for us to begin an investigation. We have published [further guidance on making complaints to us about issues relating to patient choice and competition](#).

A complaint should include the following details:

- name, address, telephone number and email address of the complainant
- name and job title of the person(s) authorised to represent the organisation or person raising the complaint
- contact details for the party that is the subject of the complaint (the respondent)

¹² The provider licence is Monitor's main tool for regulating providers of NHS services. It sets out conditions that healthcare providers must meet to help ensure that the health sector works for the benefit of patients.

- a description of the services involved
- an outline of the relationship between the complainant and the respondent
- a chronology outlining relevant events
- a statement of why, in the opinion of the complainant, the conduct in question is inconsistent with one or more of the rules governing choice and competition in the healthcare sector and any supporting evidence, where available
- an explanation of how the complainant's business has been affected by the alleged activity and/or how people who use healthcare services have been adversely affected by the alleged activity.

Complaints should be submitted to cooperationandcompetition@monitor.gov.uk or posted to:

Co-operation and Competition Directorate
Monitor
Wellington House
133-135 Waterloo Road
London
SE1 8UG

Before disclosing a complainant's identity we will discuss the matter with them and give them an opportunity to make representations.

Informal advice

Anyone can approach us informally to seek advice about how we apply our concurrent powers or talk to us before making a complaint about a possible breach of competition law. Resources permitting, we will try to give an initial view as to whether we would be likely to investigate the matter further if a formal complaint were made. If you wish to seek informal advice please contact Monitor's Co-operation and Competition Directorate at:

cooperationandcompetition@monitor.gov.uk

Investigation procedures

The investigation procedures described below will apply to investigations we begin on our own initiative or in response to a complaint.

We will conduct investigations into suspected breaches of CA98 in accordance with the procedural rules set out in relevant parts of our [‘Enforcement guidance’](#)¹³ and the CMA’s [CA98 rules](#).¹⁴

We have a range of information-gathering powers under competition law. These include the power to require any person to produce specified document(s) and/or information which relates to any matter relevant to the investigation, and the power to enter premises in connection with an investigation in certain circumstances.

A person is guilty of an offence if he/she fails to comply with a requirement imposed on him/her under our information-gathering powers.

Where we decide to begin an investigation of a potential breach, we will notify the relevant party or parties and explain what we are investigating, the key contacts at Monitor, and the expected timetable for the investigation. Where appropriate, we will publish information about the investigation on our website.

There is no specific time period within which we must complete an investigation, but we will provide parties with our expected timescales and provide updates to the timescales as appropriate. In longer running cases we intend to give the relevant parties regular updates about how the investigation is progressing and when key decisions are likely to be taken.

Before making a decision that there has been a breach of competition law, we will give written notice to the person(s) likely to be affected by the proposed decision and give that person(s) an opportunity to make representations, including the opportunity to attend an oral hearing.

Complaints about the procedures followed during the course of an investigation under CA98 may be made to a procedural officer.¹⁵

Our enforcement powers in competition cases

We have a number of enforcement powers in cases involving a breach of competition law.¹⁶

We have discretion as to what enforcement action is appropriate in each case. In exercising this discretion, we will ensure the action we take is proportionate and reasonable in the circumstances.

¹³ The following sections of Monitor’s ‘Enforcement guidance’ apply to the exercise of our competition law powers: 2.2, 2.3, 4.2.1, 4.2.2, 4.2.3, 4.5, 5 and 6.2.

¹⁴ These rules replace the previous procedural rules that applied to OFT investigations under CA98 (See CA98 (OFT’s Rules) Order 2004 SI 2004/2751.)

¹⁵ The procedural officer is a person appointed to adjudicate procedural complaints that arise in CA98 investigations. They are independent of the investigation.

¹⁶ For further guidance on the application of these principles see [‘Enforcement’](#) (OFT 407).

Where there are issues around the financial or clinical sustainability of a provider these may be relevant to our decision about whether to pursue enforcement action and what type of enforcement action is appropriate. For example, we are likely to consider the impact of our possible enforcement actions on providers and the local health economy, and whether this is proportionate to the scale of the problem we aim to correct.

Directions

Where we have decided there has been a breach of competition law, we may give such directions (legally binding instructions) as we consider appropriate to bring the infringement to an end. These may include requiring organisations to modify or terminate an agreement, or to modify or cease the conduct in question. We are able to give directions to such persons as we consider appropriate, and not just to the parties breaching competition law.¹⁷ Directions may also require positive action, such as reporting to us or structural changes. The directions must be in writing.

If a person or organisation fails, without reasonable excuse, to comply with a direction given by us, we may apply to court for an order requiring compliance with the direction.

Interim measures

During an investigation into a potential breach of competition law, we may give interim measures directions pending our final decision. These are temporary directions that require certain steps to be taken while an investigation is carried out. They will not affect the final decision.

We can give interim measures directions if we consider that it is necessary as a matter of urgency to:

- prevent significant damage to a particular person or category of person, or
- protect the public interest.

In deciding whether the imposition of interim measures is appropriate, we will draw on the approach of the CMA¹⁸ and ensure that:

- we impose interim measures only where we have identified specific behaviour or conduct that we consider is causing or will cause significant damage to a person or category of persons, or is or will be contrary to the public interest

¹⁷ For example, directions may be addressed to the parent company which, though not the actual instigator of the infringement, has a subsidiary which is the immediate party to the infringement.

¹⁸ See the CMA's [guidance on their investigation procedures in CA98 cases](#).

- the particular interim measures imposed will prevent, limit or remedy the significant damage identified and are proportionate for the purpose of preventing, limiting or remedying that significant damage.

Commitments

We may accept binding commitments from organisations suspected of infringing competition law. We are required to have regard to the CMA's guidance when considering whether to accept commitments offered.¹⁹ Commitments may be structural or behavioural, or a combination of both.

In accordance with the CMA's guidance, we are likely to consider it appropriate to accept binding commitments only where:

- the competition concerns are readily identifiable
- the competition concerns are fully addressed by the commitments offered and
- the proposed commitments can be implemented effectively and, if necessary, within a short period of time.

Once we have accepted binding commitments, we will end our investigation into the aspects of the alleged infringement addressed by the commitments. This does not prevent us from taking action in relation to competition concerns that are not addressed by the commitments we have accepted.

We enforce binding commitments in the same way as directions.

Penalties

We have the power to impose a financial penalty in relation to a breach of competition law if we are satisfied that the infringement has been committed intentionally or negligently.²⁰ We must have regard to the CMA's guidance²¹ when determining the appropriate level of a penalty. The CMA or concurrent regulators, including Monitor, may impose a financial penalty on an undertaking of up to 10% of the undertaking's worldwide turnover.

In accordance with the CMA's guidance we will use the following six-step approach to calculate the amount of a penalty:

- calculation of the starting point having regard to the seriousness of the infringement and the relevant turnover of the undertaking

¹⁹ See the Annex to 'Enforcement' (OFT 407):

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/284436/oft407.pdf

²⁰ Section 36(3), CA98

²¹ OFT's '[Guidance as to the appropriate amount of a penalty](#)' (OFT 423):

www.gov.uk/government/uploads/system/uploads/attachment_data/file/284393/oft423.pdf

- adjustment for duration
- adjustment for aggravating or mitigating factors
- adjustment for specific deterrence and proportionality
- adjustment if the maximum penalty of 10% of the worldwide turnover of the undertaking is exceeded and to avoid double jeopardy²²
- adjustment for leniency and/or settlement discounts.

Leniency

The CMA's [guidance on 'Applications for leniency and no-action in cartel cases'](#) also sets out its policy and practice on leniency in cartel cases (including, subject to certain conditions, granting total immunity from financial penalties to a participant in cartel activity who is the first to come forward).²³ Where cartel cases are allocated to us under the concurrency arrangements, we will adopt the CMA's approach to leniency.

Our approach to publishing decisions

The non-confidential version of an infringement decision and a summary of the decision will be published on our website.

Appeals against our decisions

Our decisions under CA98 and the TFEU may be appealed to the Competition Appeal Tribunal.

The parties we investigate and third parties with a sufficient interest can appeal our decisions. Appealable decisions include decisions about whether there has been a competition law infringement; interim measures decisions; and decisions on the imposition of, or the amount of, a penalty.²⁴

²² If a penalty or fine has been imposed by the European Commission, or by a court or other body in another Member State in respect of an agreement or conduct, we must take that penalty or fine into account when setting the amount of a penalty in relation to that agreement or conduct. This is to ensure that where an anti-competitive agreement or conduct is subject to proceedings resulting in a penalty or fine in another Member State, an undertaking will not be penalised again in the UK for the same anti-competitive effects.

²³ For the purposes of the CMA's leniency policy for undertakings, cartel activity is defined as agreements and/or concerted practices which infringe Article 101 of the TFEU and/or the Chapter I prohibition and involve price-fixing (including resale price maintenance), bid-rigging (collusive tendering), the establishment of output restrictions or quotas and/or market sharing or market dividing.

²⁴ See guidance from the Competition Appeal Tribunal on appeals under the 1998 Competition Act: <http://www.catribunal.org.uk/240/Rules-and-Guidance.html>

The Competition Appeal Tribunal is a specialist judicial body with cross-disciplinary expertise in law, economics, business and accountancy whose function is to hear and decide cases involving competition or economic regulatory issues.

The tribunal has wide powers to determine most appeals under competition law on their merits and may:

- confirm or set aside all or part of the decision
- remit the matter to us
- impose, revoke or vary the amount of any penalty
- give such directions, or take such other steps as we could have given or taken or
- make any other decision we could have made.

Assessing anti-competitive practices in the health sector

We have published [examples of anti-competitive practices](#) in relation to the provision of healthcare services that may breach the Chapter I prohibition and/or Article 101.

In assessing whether agreements infringe competition law, we will follow the approach set out by the CMA in the guidance 'Agreements and concerted practices' (OFT 401).

Benefits

If we find that an agreement prevents, restricts or distorts competition, we will consider whether it gives rise to benefits and assess whether these benefits outweigh the anti-competitive effects. We will apply the framework set out in the European Commission's notice 'Guidelines on the application of Article 101(3) TFEU'.²⁵

The party or parties submitting that the agreement gives rise to benefits must demonstrate how the benefits will be passed on to healthcare users, for example, through lower prices to commissioners or increased financial surpluses that will be reinvested in services for patients.

²⁵ Guidelines on the application of Article 101(3) TFEU (formerly Article 81(3) TEC) [Official Journal No C 101 of 27.4.2004]. To satisfy Article 101(3) an agreement must satisfy four conditions: it must contribute to improving the production or distribution of goods or to promoting technical or economic progress; allow consumers a fair share of the resulting benefit; it must not impose unnecessary restrictions on the undertakings concerned; nor offer the undertakings the possibility of eliminating competition in a substantial part of the products in question.

Any restriction on competition must as a matter of law be necessary to achieve the benefits in order for the anti-competitive agreement to be permissible. We will therefore consider the extent to which efficiency gains could be realised without the restrictions on competition.

Representative and professional bodies

The healthcare sector features a wide range of representative and professional bodies. These organisations play an important role in the sector in representing the interests of members on a range of matters, and can help providers improve their effectiveness in the marketplace, for instance by disseminating clinical knowledge and sharing best practices.

Decisions by these organisations are also subject to competition law, and the organisations themselves can infringe competition law and be subject to enforcement action. Similarly, agreements entered into by an association or professional group might be construed as an agreement on the part of its members, which means the members could be held accountable for infringements.

Decisions by such organisations are most likely to raise concerns where they lead to the co-ordination of members' behaviour instead of the members competing with each other. In particular, representative and professional bodies should be careful that they do not facilitate or provide a forum for anti-competitive behaviour by their members.

Commissioner involvement

It is important to keep in mind that the fact that a commissioner initiates or participates in an agreement does not protect participating providers or trade associations from the possibility of breaching competition law. Nor can providers justify infringing competition rules simply by claiming that a commissioner encouraged them to adopt particular arrangements.

Assessing abuse of dominance in the health sector

In assessing whether the conduct of an individual organisation infringes competition law, we will follow the approach set out by the CMA in the guidance 'Abuse of a dominant position' (OFT 402). We have also published [examples of conduct](#) in relation to the provision of healthcare services that may breach the Chapter II prohibition and/or Article 102.

Conduct by providers may frequently be motivated by good intention. Behaviour that might look like attempts to prevent rival organisations from competing effectively, for example, could be motivated by a desire to promote the interests of patients or protect the local health economy. However, providers should be mindful that such motivation does not necessarily imply that conduct will always be in the interests of patients and/or taxpayers.

Glossary

Abuse of dominance: Conduct may constitute an abuse of dominance if, for example, it:

- directly or indirectly imposes unfair purchase or selling prices or other unfair trading conditions
- limits production, markets or technical development to the prejudice of consumers
- applies dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage
- makes the conclusion of contracts subject to the other parties accepting supplementary obligations which have no connection with the subject of the contracts.

Anti-competitive practices: The prohibition in Chapter I of CA98 and Article 101 of the TFEU applies to agreements, decisions or practices which have as their object or effect the prevention, restriction or distortion of competition within the United Kingdom. This includes agreements, decisions or practices which:

- directly or indirectly fix purchase or selling prices or any other trading conditions
- limit or control production, markets, technical development or investment
- share markets or sources of supply
- apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage
- make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, have no connection with the subject of such contracts.

CA98: Competition Act 1998

CMA: Competition and Markets Authority

Competition law: For the purposes of this guidance, competition law means Chapter I and Chapter II of the Competition Act 1998 and Articles 101 and 102 of the TFEU.

Concurrent powers: Powers to enforce competition law that may be exercised by both the CMA and sector regulators.

OFT: Office of Fair Trading

Sector regulator: A regulator responsible for regulating matters (including competition) in a particular sector. Other sector regulators are the Office of Communications (Ofcom), the Water Services Regulation Authority (Ofwat), the Office of the Gas and Electricity Markets (Ofgem), the Northern Ireland Utility Regulator, the Office of Rail Regulation (ORR) and the Civil Aviation Authority (CAA).

TFEU: Treaty on the Functioning of the European Union

Undertaking: The term undertaking is described in [guidance adopted by the CMA](#). It is not defined in CA98 or the TFEU, but UK and EU case law has defined 'undertaking' as covering any natural or legal person engaged in 'economic activity', regardless of its legal form or the way in which it is financed. Assessment of whether a body is an undertaking therefore focuses on the nature of the activity undertaken, not the nature of the body that undertakes it.



Making the health sector
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Contact us

Monitor, Wellington House,
133-155 Waterloo Road,
London, SE1 8UG

Telephone: 020 3747 0000
Email: enquiries@monitor.gov.uk
Website: www.gov.uk/monitor

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