

Annual report on concurrency

2018

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Foreword

This is the fourth 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

The first couple of years of the regime were about putting in place the building blocks for more effective competition enforcement in the regulated sectors and developing cooperation between the regulators. By contrast, the last couple of years have been about the deepening of that cooperation with the result that the CMA and the sector regulators have been working together to increase the effectiveness not only of Competition Act 1998 enforcement in the regulated sectors, but also the promotion of competition through effective markets work and other areas of competition policy and regulation.

Key messages

Overall, we consider that the concurrency arrangements have been working well, with a step-change in the level of cooperation between the CMA and the regulators during the past year:

- Delivery of existing cases under the Competition Act 1998 has continued. Almost all of the sector regulators have now opened a competition case since the start of the new concurrency regime in 2014. Two of the five ongoing cases across the regulated sectors have concluded, and four new investigations have been opened in the energy, airport services, payment systems and financial services sectors. Two of these new cases have been launched by the CMA as it was better placed than the relevant sector regulator to carry out the investigations. In all cases, we see the effectiveness of the concurrency arrangements in harnessing the complementarity of skills of the CMA and the regulators. The period also saw the first time that more than two regulators have had jurisdiction to investigate a particular case.
- The CMA and regulators have undertaken significant markets work. The CMA published the final report in its Digital Comparison Tools market

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

² The enhanced concurrency arrangements aim to increase competition law enforcement activity in the regulated sectors by strengthening cooperation between the CMA and the sector regulators and, more generally, to promote competitive outcomes for the benefit of consumers, business and the overall economy. Under those arrangements, the CMA and the sector regulators for key sectors of the economy (specifically, airports and air traffic services, telecoms, post, broadcasting, spectrum, energy, water and sewerage, rail in Great Britain, healthcare services in England, financial services and payment systems) have concurrent powers to apply competition law in the relevant sector.

study, launched a new market study into heat networks, and launched an in-depth market investigation into the investment consultancy services and fiduciary management services markets following referral by the FCA. The ORR recently launched a market study under the Enterprise Act 2002 into automatic ticket gates and ticket vending machines. The regulators have also undertaken a wide variety of market reviews under their sector-specific powers, such as the FCA's market study into how investment platforms compete for both advised and non-advised retail investors and the Water Services Regulation Authority's (Ofwat) review of the New Appointment and Variations market.

- The CMA and regulators have engaged in extensive policy work. The FCA and Ofgem, with assistance from the CMA when necessary, have continued implementing remedies from the Retail Banking and Energy market investigations, while Ofcom has worked to promote competition in fixed-line services by creating a more independent Openreach.
- Cooperation between the CMA and regulators and between regulators has continued to deepen. On Competition Act 1998 cases and on competition work more generally, co-operation and joint working continues to increase, with secondments (including the sharing of investigation staff), regular information and best practice sharing, and discussions on policy and procedural issues. In particular, this period saw the publication of an information note on arrangements for the handling of leniency applications in the regulated sectors, as well as ongoing work on a project on consumer remedies.

In the previous reporting period, the CMA sought to understand the barriers and opportunities for competition investigations and whether more needed to be done to increase the volume and effectiveness of Competition Act 1998 enforcement in regulated sectors. This work has clearly contributed not just to closer cooperation and collaboration in Competition Act 1998 investigations, but also to more effective work in other areas of competition regulation and policy.

As noted above, the period of this report has seen four new Competition Act 1998 cases opened involving the regulated sectors compared with just two new cases in each of the previous two reporting periods. But, as indicated in previous reports, the number of cases is only one factor in assessing the impact of the concurrency arrangements. In addition to the increased sharing of know-how, innovation and expertise between the CMA and the regulators that was referred to above, the CMA has provided support to the regulators on procedural and substantive issues earlier in cases to facilitate effective enforcement. Regulators have shared know-how gained from their own enforcement experience and their sector expertise, not only to assist the CMA in Competition Act 1998 cases but also in markets, merger control

and other competition policy work. The collaboration between the CMA and regulators extends beyond cases and projects to include working together on cross-cutting strategic issues such as consumer vulnerability and online and digital markets.

These developments highlight the real benefits to have been realised through the strong working relationships that have developed as a result of the concurrency regime. These relationships go beyond the Competition Act 1998 to facilitate closer working on and greater effectiveness of all aspects of competition regulation and policy.

Andrea Coscelli

Chief Executive, Competition and Markets Authority

April 2018

A. Introduction

1. The purpose of this annual concurrency report is to assess the operation of the arrangements for concurrency in the regulated sectors.³ ‘Concurrency’ is the regime under which competition law is applied in the regulated sectors, not only by the Competition and Markets Authority (CMA), but also by the sector regulators exercising competition law powers in the sectors for which they are responsible, specifically their powers to:
 - (a) apply the UK and EU law prohibitions on undertakings engaging in anticompetitive agreements or on the abuse of a dominant market position;⁴
 - (b) conduct market studies and, if appropriate, to 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.⁵
2. The concurrency arrangements provide for cooperation between the CMA and the sector regulators in relation to their concurrent powers to enforce competition law and investigate markets. This is the fourth annual concurrency report to be published by the CMA and relates to the operation of the concurrency arrangements from 1 April 2017 to 31 March 2018.⁶
3. Consistent with both the concurrency arrangements and the strategic steer issued to the CMA by government,^{7, 8} the CMA and sector regulators have

³ 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.

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 European Union](#).

⁵ The market investigation provisions are in Part 4 of the [Enterprise Act 2002](#).

⁶ The CMA has a statutory obligation to prepare and publish an annual report on the operation of the concurrency arrangements, pursuant to section 25(4) of the [Enterprise and Regulatory Reform Act 2013](#), read with paragraph 16 of Schedule 4 to that Act. Practical aspects of the concurrency arrangements relating to, for example, the allocation of cases between the CMA and the relevant regulator and the sharing of relevant information in respect of cases are set out in the [Competition Act 1998 \(Concurrency\) Regulations 2014](#).

⁷ In December 2015, the government issued a revised non-binding ‘strategic steer’ to the CMA setting out the government’s view that, in relation to the regulated sectors, the CMA should continue to focus on: “playing a leadership role with regulators that have competition powers, especially those that are new to the concurrency regime. The CMA should encourage those regulators to make greater use of their competition powers and to tackle anti-competitive actions in regulated markets”. It also confirmed that the CMA should build: “a strong dialogue with sector regulators using the UK Competition Network to ensure that the overall competition regime is coordinated and regulatory practices complement each other”.

⁸ Since the end of the relevant reporting period and before publication of this report, the government has published for consultation a draft new strategic steer which requires the CMA to “lead work with sector regulators to ensure the overall competition regime is co-ordinated and that consumers are protected from illegal and anti-competitive practices” (see Annex A to [Modernising Consumer Markets: Consumer Green Paper](#)).

worked together effectively over the period of this report. In summary, the CMA and the sector regulators have:

- (a) Opened four new cases in regulated sectors – one in airport services, one in energy, one in payment systems and one in financial services. The regulators have also closed two existing cases under the Competition Act 1998, one in financial services (matter taken over by the European Commission) and one in airport services (administrative priorities);
- (b) Undertaken significant market investigations work in the regulated sectors. In September 2017, the Financial Conduct Authority (FCA) referred the supply and acquisition of investment consultancy services and fiduciary management services to the CMA for an in-depth market investigation. Following publication in 2016 of the final reports in the CMA's market investigations into the supply and acquisition of energy in Great Britain and the supply of retail banking services to personal current account customers and small and medium-sized enterprises, the CMA has been working on the implementation of the remedies identified in those reports. Ofgem and the FCA have also continued their work to implement the various remedies addressed to them in the two respective reports;
- (c) Engaged in extensive markets and policy work in regulated sectors, including the publication of the CMA's final report on its market study into Digital Comparison Tools (DCTs), the launching of the CMA's market study into heat networks and, more recently, the opening by the Office of Rail and Road (ORR) of a market study under the Enterprise Act 2002 into the supply of automatic ticket gates and ticket vending machines. A variety of other market studies or reviews have been undertaken by the regulators under their respective sector-specific powers. Other work has also been undertaken to promote competitive outcomes, for example, the Office of Communications' (Ofcom) work to promote competition in fixed-line services by creating a more independent Openreach;
- (d) Continued the significant increase in cooperation on cases and extensive joint working. Secondments, both ongoing and newly arranged, continue to take place regularly; and
- (e) Engaged in regular UK Competition Network (UKCN) discussions on policy and procedural issues and worked together on the publication of an information note on arrangements for the handling of leniency applications in the regulated sectors as well as on a project on consumer remedies.

4. Further details of the developments described above can be found below and in the CMA and sector-specific chapters that follow this Introduction.

Significant investigations in the regulated sectors

Competition prohibitions

5. At the beginning of the period of this report, there were five ongoing cases across the regulated sectors, two of which have since concluded. All of the sector regulators have now opened or are running a competition case since obtaining their concurrent competition powers, except the Northern Ireland Authority for Utility Regulation (NIAUR) and NHS Improvement (NHSI).⁹ During the period covered by this report, new investigations have been opened by Ofgem in the energy sector and by the Payment Systems Regulator (PSR) in relation to payment systems and a further two have been opened by the CMA in relation to airport services and financial services. All these cases are described in greater detail in the CMA and sector-specific chapters of this report, but in summary:

(a) **Communications:** Ofcom has been progressing one competition case in the postal sector. Ofcom issued a Statement of Objections to Royal Mail in July 2015 which set out the provisional view that Royal Mail breached competition law by engaging in conduct that amounted to unlawful discrimination against postal operators competing with Royal Mail in delivery. Ofcom has carefully considered Royal Mail's representations, gathered additional evidence and carried out further analysis. Ofcom expects to make a decision in this case before summer 2018;

(b) **Airport services:**

- (i) The CAA closed its Chapter II investigation into access to car parking facilities at East Midlands International Airport on administrative priority grounds.
- (ii) In December 2017, the CMA opened an investigation into suspected breaches of competition law in respect of facilities at airports. The investigation is under Chapter I of the Competition Act 1998. The

⁹ NHSI has not yet run a competition case but it was involved in the CMA's investigation into anti-competitive information exchange and pricing agreements within the private ophthalmology sector and provided two secondees to work on the investigation and assist with technical aspects of the case. The case settled in August 2015 and the infringing company was fined £382,500.

CAA is providing support, including a secondee, and sector expertise to the CMA.

(c) Energy:

- (i) Ofgem continued its investigation, opened in August 2016, into a potential infringement of Chapter I of the Competition Act 1998 which concerned anti-competitive agreements and concerted practices affecting the energy sector.
- (ii) Ofgem opened an investigation into a potential infringement of Chapter II of the Competition Act 1998 and Article 102 of the Treaty on the Functioning of the EU relating to a possible abuse of dominance by an undertaking providing services to the energy industry. The case was opened in August 2017 with a further progress update expected in June 2018.

(d) Financial services:

- (i) The FCA continued its investigation into anti-competitive agreements and concerted practices concerning the sharing of information in the asset management sector. In particular, in November 2017, the FCA issued a statement of objections to four firms.
- (ii) The FCA closed its investigation into conduct in the aviation insurance sector as the European Commission has taken the matter over.
- (iii) The CMA has launched a new case concerning the use of certain retail 'most favoured nation' (MFN) clauses by a price comparison website in relation to home insurance products. Evidence in this case came to the CMA's attention during the course of its market study into DCTs. While the investigation involves financial services, the CMA and the FCA agreed that the CMA should take the investigation due to its experience in considering the impact of MFN clauses on competition and the broader policy implications involved. The FCA is working closely with the CMA to provide sector expertise.

(e) Payment systems:

- (i) The PSR opened its first Competition Act 1998 case. The PSR, working closely with the CMA, carried out inspections under warrant at several business premises throughout the UK. The ongoing investigation will be an important part of the PSR's antitrust work in 2018/2019.

6. The table below collates the numerical data in respect of newly launched and ongoing cases across the regulated sectors.

Table 1: Use of powers under the Chapter I and Chapter II prohibitions in the Competition Act 1998 (or relevant EU prohibition) in the regulated sectors for the year 1 April 2017 to 31 March 2018

	<i>Total</i>
Number of cases ongoing at start of reporting period	5*
Number of new complaints ¹⁰	18
Number of investigations formally launched	4
Number of those cases in the year to date in which:	
- information gathering powers and powers to enter premises/conduct dawn raids were used	7
- a Statement of Objections was issued	1
Number of those cases in the year to date that resulted in:	
- an infringement decision	0
- the giving of commitments	0
- an exemption or clearance decision (or equivalent)	0
- case closure without full resolution	2*, **
Number of cases that are ongoing	7
Number of cases in the year to date in which the decision was appealed to the CAT	0
Decisions taken to use direct regulatory powers instead of competition prohibition powers where those competition prohibition powers could have been exercised	0

* While the Chapter I element of the CAA's investigation into access to car parking facilities at East Midlands International Airport resulted in an infringement decision in 2016, the Chapter II element of the case was closed in June 2017.

** The FCA's investigation into conduct in the aviation insurance sector has been closed, as the European Commission has taken the matter over.

7. The CMA and regulators have also issued a number of warning and advisory letters over the past year which are designed to promote a competitive outcome for consumers. These softer enforcement tools can, in appropriate circumstances, also be effective and efficient in addressing a potential competition concern. Warning and advisory letters can have particular impact where a market is newly open to competition, or where there is limited familiarity with competition principles, as they can improve compliance and increase awareness more speedily than can be achieved via competition enforcement. For example, during the reporting period, the FCA issued three 'on notice' letters¹¹ to firms, and Ofgem issued an advisory letter to multiple recipients following a complaint while not reaching a view on whether the section 25 threshold was met. Details are set out in the relevant chapters.

¹⁰ 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.

¹¹ The FCA's warning letters are known as 'on notice' letters. This is to avoid possible confusion with 'private warning' letters under Financial Services and Markets Act 2000 ([FSMA](#)).

Market investigations

8. One new market investigation was launched during the period of this report. In September 2017, the CMA launched an in-depth market investigation into the supply and acquisition of investment consultancy services and fiduciary management services to and by institutional investors and employers in the UK, following a referral by the FCA (see the CMA chapter).

Market studies and policy work

Digital comparison tools

9. In September 2017, the CMA published its final report following a year-long market study into the use of DCTs by consumers to compare and potentially to switch or purchase products or services from a range of businesses. The study found that such tools offer a range of benefits, including helping people shop around by making it easier to compare prices and encouraging suppliers to compete harder to provide lower prices and better choices.
10. However, the study also found that some sites could improve their practices to ensure that consumers can trust them and can make sufficiently well-informed choices between DCTs and between suppliers that are listed on them. The CMA set out principles which deliver positive outcomes and reflect the existing law – spelling out that DCTs should treat people fairly by being Clear, Accurate, Responsible and Easy to use (the CARE principles).
11. The study found that while competition is mostly effective, there were concerns over some types of agreements between DCTs and suppliers. The CMA subsequently opened a competition law investigation¹² in relation to one DCT's contracts with home insurers, which appeared to limit insurers' ability to charge a lower price on one platform than on another ('wide price parity' / MFN clauses) and may result in higher home insurance prices.
12. The CMA's recommendations included that regulators should have regard to the CARE principles when assessing compliance with the law by DCTs and consider updating voluntary accreditation schemes to remove the most potentially distorting rules – particularly on market coverage requirements. The study also recommended that the government look to bring intermediaries like DCTs into regulators' scope in the energy and telecoms sectors.

¹² See paragraph 5(d)(iii) above

13. Other recommendations included that regulators should consider ways to free up more data and make it easier for consumers to use DCTs, as well as working with DCTs and suppliers to improve the effectiveness of quality metrics. In addition, there were some specific recommendations addressed to the FCA, Ofgem and Ofcom.
14. In December 2017, the Department for Business, Energy and Industrial Strategy (BEIS), responding on behalf of the government, welcomed the publication of the report and noted that more is needed to ensure the benefits of DCTs are felt as widely as possible. A full government response will be given to the CMA's recommendations in spring 2018.
15. In the following sub-paragraphs, we provide an update on the progress made by the relevant regulators in implementing the CMA's recommendations, as well as the work being undertaken by the UK Regulators Network (UKRN) to implement some of the recommendations that were addressed to all the regulators.

(a) **UKRN**

The UKRN welcomed the recommendations to regulators in the CMA's final report on DCTs. These encouraged the relevant regulators to work individually and collectively to add to the already considerable benefits that consumers gain from using DCTs, in terms of choice, value and competition. The UKRN is helping to facilitate the collective work being undertaken by Ofcom, Ofgem, FCA, CAA and Ofwat to address the general recommendations for sector regulators in the report as well as supporting those regulators to which specific recommendations were addressed.

The UKRN has formed a project team with the relevant regulators and plans to:

- Ensure a consistent approach to DCTs, having regard to the CARE principles¹³ and to the informal guidelines provided by the CMA in its market study report,¹⁴ which provide details on the factors that regulators should consider when assessing whether to intervene and help DCTs do more for consumers
- Consider ways in which to free more information to improve data portability, so that consumers can obtain useful

¹³ CMA, [Paper C: The application of the law and regulation to digital comparison tools](#), September 2017.

¹⁴ CMA, [Paper D: Making comparison easier and more effective](#), September 2017.

comparisons of complex and data-intensive services, such as in the insurance sector

- Explore improvements in the use of product quality metrics, both in terms of their nature and the ways in which they are presented on DCTs, to support effective comparisons

(b) FCA

As well as participating in the UKRN work, the FCA has identified the following key areas for action:

- The FCA has ongoing responsibilities to regulate DCTs that are authorised by the FCA and it is considering its future DCT supervisory strategy
- The FCA will have regard to the CARE principles in the course of its supervisory work
- The FCA has an ongoing commitment to encourage innovation in the interest of consumers. As part of this, the FCA offers support and advice to firms, including DCTs, if they have genuinely ground-breaking or different offerings that offer a good prospect of identifiable consumer benefits

(c) Ofgem

Ofgem understands that retail market arrangements can get in the way of beneficial innovation and competition in a number of ways. Evidence from Ofgem's Innovation Link¹⁵ suggests that the regulatory framework often constrains companies' ambitions or forces them to move more slowly. Existing arrangements can prevent potential new entrants with disruptive business models from entering the market. Ofgem's work on future supply market arrangements¹⁶ is looking at how to address these challenges. This includes considering issues around access to data and the increasing role intermediaries can play in the market to support consumers.

Where innovators are successful in entering the market, they do not always operate directly under Ofgem's regulatory framework. It can be

¹⁵ [Ofgem's Innovation Link](#) is a 'one stop shop' offering support on energy regulation to businesses looking to introduce innovative or significantly different propositions to the energy sector.

¹⁶ Ofgem project seeking evidence on barriers to innovation, default supply arrangements for consumers that do not engage in the market, and protection for all consumers regardless of how they access their energy supply.

easiest to regulate these entities indirectly via a licensed supplier (as their agent) but it is not clear whether this is sustainable. Ofgem's work on future supply market arrangements is considering what an appropriate future protection framework might look like. Where appropriate, Ofgem will align its approach to DCTs with other regulators and address regulatory issues where evidence shows that they are holding back consumer benefits.

(d) Ofcom

Ofcom wants more people to shop around with confidence and take full advantage of the wide choice of competitive services on offer. DCTs are vital for helping people do that. Ofcom currently operates an accreditation scheme for price comparison websites, which aims to ensure that information provided to consumers is accessible, accurate, transparent, comprehensive and up to date. The requirements of the Ofcom scheme already reflect the CARE principles, including on clarity and accuracy. In its Annual Plan, Ofcom committed to review its scheme later in 2018 and, as part of this work, will consider the CMA's specific recommendations. Separate to this, Ofcom has engaged informally with some non-accredited DCTs to discuss how they might better adopt the CARE principles. Ofcom is working with operators to make available information on broadband speed to DCTs and is also exploring ways to make mobile coverage data available.

Earlier this year, Ofcom also announced work to look at why some people do not shop around for different offers and how it can make it easier for them to find the best deal.¹⁷ Ofcom's aim is to ensure that more consumers can seek out and obtain the best offers and deals available, whether this means purchasing an alternative tariff or package from another provider, or negotiating better rates or services with their current provider. Ofcom is also looking to improve the information available to consumers about the quality of telecoms services. Its second annual Comparing Service Quality report will be published in spring 2018. The report enables voice and broadband customers to compare how different providers perform against a number of service quality dimensions such as answering customer calls, satisfaction with complaints handling and with the reliability of their services.

(e) Ofwat

¹⁷ Ofcom, [Helping people to shop around and secure the right deal](#), July 2017.

Although not the subject of specific recommendations in the CMA's report, Ofwat is considering further work in relation to DCTs as it expects to see them emerge and play a significant role in the water market. Ofwat believes that the CMA's market study provides a number of lessons to consider with respect to DCTs and third-party intermediaries serving water customers (in particular, the inputs that need to be in place to realise the benefits of DCTs).

Heat networks

16. In December 2017, the CMA launched a market study on heat networks following concerns that many customers may be unable to easily switch suppliers or are locked into very long contracts. There is also a risk that they may be paying too much or receiving a poor quality of service. Ofgem is assisting the CMA by sharing its knowledge of regulation and consumer protection in the energy sector. An interim report with the CMA's initial findings and views on potential remedies and whether a market investigation reference is required will be produced by June 2018 with a final report due to be published by December 2018 (see the CMA chapter).

Automatic ticket gates and ticket vending machines

17. In March 2018, the ORR opened a market study into the supply of automatic ticket gates and ticket vending machines. This is the first market study to have been launched by a sector regulator under the Enterprise Act 2002 since the new market study provisions were introduced under the Enterprise and Regulatory Reform Act 2013. The ORR's market study follows a market review looking into the wider markets for ticketing equipment and systems,¹⁸ launched in October 2017, which identified concerns that high concentration and a lack of effective competition may be causing higher prices, reductions in quality, and stifling innovation of ticket vending machines and automatic ticket gates.
18. In light of these concerns, the market study will focus on:
 - Concentration and market shares in the ticket vending machine and automatic ticket gate markets

¹⁸ As well as automatic ticket gates and ticket vending machines, the market review looked at ticket issuing systems, which covers the software that is the 'brain' of a sales system and which is an essential 'input' to downstream ticket retailing. Each consumer facing sales channel (eg mobile, web, ticket vending machines, on-train) requires a ticketing issuing system.

- Outcomes for customers, both the immediate customers of these products such as Transport for London, train operators, Network Rail, and, passengers
- Drivers for market outcomes

Other market studies and market reviews

19. A number of regulators have used their sectoral powers to carry out market studies and market reviews that have focused on competition issues within their sectors. Further information on the market studies and reviews referred to below is available in the relevant regulators' respective chapters.
20. The FCA, using its powers under the Financial Services and Markets Act 2000 (FSMA), is currently carrying out three market studies and has published the outcome of another market study:
 - (a) Mortgage market study – the study, launched in December 2016, aims to understand whether customers face challenges in making effective decisions in the mortgage market. The FCA aims to publish an interim report in spring 2018.
 - (b) Investment Platforms market study – launched in July 2017, the study aims to understand how investment platforms compete for both advised and non-advised retail investors. The FCA is assessing the information collected by relevant parties and aims to publish an interim report in summer 2018.
 - (c) Wholesale Insurance Brokers market study – in November 2017, the FCA launched its market study to understand how competition is working in the wholesale insurance broker sector. The FCA aims to publish an interim report by the end of 2018.
 - (d) Asset Management market study – in June 2017, the FCA published the final report in its Asset Management market study, the aim of which had been to understand whether competition is working effectively to enable investors to get value for money when purchasing asset management services. The FCA proposed a package of remedies in the final report of this market study. As one element of that package, the FCA made a market investigation reference to the CMA for an investigation of the supply and acquisition of investment consultancy services and fiduciary management services to and by institutional investors and employers in the UK (which is further described in the CMA chapter).

21. In July 2017, the FCA published its interim findings in the Retirement Outcomes review, which explores how the retirement income market is evolving since the pension freedoms were introduced in April 2015. The FCA expects to publish the final report of the review in 2018.
22. Ofcom has carried out a number of market reviews during the reporting period using its sector-specific regulatory powers. These include:
 - (a) Business Connectivity market review (BCMR) – as a result of an appeal brought by BT against certain aspects of the market definitions in the 2016 BCMR, Ofcom has revoked the regulation of the services affected by the appeal and is reconsidering a number of issues in a new analysis of the markets.
 - (b) Mobile Termination Rates (MTR) market review – in June 2017, Ofcom published a consultation in relation to its MTR market review, which examined competition in the provision of mobile call termination and considered the appropriate form of *ex ante* regulation, if any, that should be imposed to protect consumers of both fixed and mobile services from any harm arising from market power. Ofcom published its final decision in a statement in March 2018.
 - (c) Narrowband market review – the review covered five wholesale markets that underpin the delivery of retail fixed voice telephone services in the UK. Ofcom published its final statement setting out its conclusions in November 2017. The outcomes from the review are designed to promote competition and further the interests of residential and business customers.
 - (d) Wholesale Local Access market review – following the publication of three consultation documents, Ofcom published its final decision in a statement in early 2018, with new measures taking effect on 1 April 2018.
 - (e) Wholesale Broadband Access (WBA) market review – Ofcom published a consultation in June 2017 in relation to its WBA market review, which examined competition within the market for the provision of WBA services. Ofcom intends to notify the European Commission of its decisions in June 2018 and to publish its final statement in July 2018.
23. In June 2017, the PSR published its final decision imposing remedies following its market review into the ownership and competitiveness of central payment systems infrastructure provision under its Financial Services

(Banking Reform) Act 2013 powers.¹⁹ The remedies required Bacs, Faster Payments Systems (FPS) and LINK to undertake a competitive procurement process for future central infrastructure contracts and also required Bacs and FPS to adopt a common international messaging standard to make it easier for new entrants to compete for future central infrastructure contracts. The implementation of these remedies is now being monitored by the PSR.

24. In October 2017, Ofwat published the findings from its review into the market for new appointments and variations (NAVs) carried out under its Water Industry Act 1991 powers.²⁰ Alongside the findings from its review, Ofwat published a paper setting out the steps that it will be taking to address the issues identified.

Promoting competitive outcomes

25. The CMA and the regulators' objective is the achievement of competitive outcomes in regulated sectors. These outcomes can be achieved in part through effective and efficient enforcement, but much can also be achieved through advocacy and compliance work.
26. The CMA regularly issues targeted communication campaigns and materials to amplify the outcomes from enforcement cases, raising awareness of anti-competitive activity to help businesses ensure they do not infringe competition law. These often involve issuing guidance to the relevant sector on competition compliance, contacting industry stakeholders directly, publishing open letters in the relevant trade press and using social media channels to highlight the anti-competitive conduct in question. In addition, the CMA continues to explore new and innovative ways to promote its work, such as through targeted digital marketing campaigns and events to encourage complaints when firms see unfair practice by others.
27. Regulators also undertake advocacy and compliance work. For example, Ofwat has undertaken work to raise awareness of the new business retail market in order to promote customer engagement and information about early development of the market. Similarly, the NIAUR has engaged with participants in the local energy market and members of the Northern Ireland legal community in order to promote awareness of its concurrent competition powers with a view to ensuring compliance. The NIAUR and CMA have jointly provided a competition awareness training event to energy companies in Northern Ireland which was facilitated by a local law firm. The FCA held a

¹⁹ For further information on the infrastructure market review, see the PSR chapter.

²⁰ For further information on NAVs, see the Ofwat chapter.

competition law presentation at the British Vehicle and Rental Leasing Association Leasing Broker Forum in October 2017, an event aimed at increasing awareness of competition law which also included information on the role of the FCA as a concurrent competition regulator.

28. The regulators have been engaged in work to promote competitive outcomes in their own sectors, in keeping with the government's steer to the CMA and HM Treasury's (HMT) 2016 Budget Enhancements to monitor use of competition in place of regulation. Details may be found in the regulator chapters but a selection of examples include:
- (a) The CAA is working closely with the Department for Transport which is leading the transposition of the insolvency protection elements of the European Package Travel Directive relating to air holidays into UK law. These will facilitate greater cross-border competition for travel businesses.
 - (b) Ofgem launched Innovation Link in December 2016 with a service to provide fast, frank feedback for energy sector innovators on the regulatory implications of their business propositions. The regulatory sandbox allows innovators to trial innovative business products, services and business models that cannot currently operate under the existing regulations.
 - (c) Ofwat has introduced a new Code for Adoption Agreements that will help improve regulated companies' customer service and enable effective competition in the sector's new connections market.
 - (d) Ofcom has sought to promote competition by creating the right conditions for companies to invest in superfast and ultrafast full-fibre networks and to make it quicker and easier for rival providers to build their own fibre networks direct to home and offices using BT's existing telegraph poles and ducts.
 - (e) ORR has continued to promote and protect competition across the range of its functions on its periodic review 2018 (PR18) work streams. The changes proposed in PR18 are designed to facilitate greater on-rail competition and encourage greater rivalry and comparative competition between Network Rail's routes.
 - (f) In Northern Ireland, the NIAUR further opened the gas markets in Greater Belfast and the Ten Towns network areas by removing the end-user price control for the former incumbent suppliers in what is known as the EUC2 (End User Category 2) sector.

- (g) The FCA published its Approach to Competition document for consultation in December 2017. This provides an overview of the way that the FCA advances its operational objective to promote competition in the interests of consumers and its competition duty.
- (h) The PSR continued work to improve access to payment systems through its open access programme and by overseeing the creation of the New Payment System Operator (NPSO), which consolidates the governance of Bacs, Faster Payments and the new Cheque Image Clearing System in line with the Payments Strategy Forum's strategy. This consolidation is intended to support innovation and competition in retail payment systems by facilitating the transition to a New Payments Architecture, which could deliver more dynamic competition and innovation in payments. Consumers and other users will benefit from new entrants coming into the market and offering users of payment services new and innovative products.
29. The CMA and regulators have also cooperated on other work for the benefit of consumers within the regulated sectors. For example, the CMA has conducted significant activity in relation to mergers in the regulated sectors during the past year, regularly working with the relevant regulators and drawing on their sector expertise. In addition, during the period of this report, the CMA has continued to review remedies following past mergers and market investigations, including ones that were imposed in the water and energy sectors. Further details can be found in the CMA chapter.

General cooperation

30. The CMA and regulators have continued to cooperate more generally, in line with the practical arrangements set out in the bilateral Memoranda of Understanding agreed between the CMA and each of the regulators in late 2015 and early 2016.
31. **Information-sharing:** The CMA and sector regulators have continued to share 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 the Concurrency Regulations and the Memoranda of Understanding. Additionally, 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.
32. **Case allocation:** During the period of this report, case allocation has continued to take place smoothly, with the allocation to Ofgem and the PSR of the new Competition Act 1998 investigations in their respective sectors with

the CMA undertaking investigations in the financial services and airport services sectors. Irrespective of which organisation conducts the investigation, the CMA and the respective regulator have used their complementary resources on each case, clearly demonstrating how the concurrency regime should work in practice. This reporting period is also the first year in which more than two authorities have had jurisdiction to investigate a particular case and have been involved in the allocation process. In each of those cases, the process has gone smoothly.

33. **Support on casework:** The CMA and sector regulators provide each other with direct assistance on casework, whether by sharing relevant policy or practical experience (eg sharing internal guidance and template documents) or by active involvement of officials at key stages of an investigation. The CMA and sector regulators have also worked cooperatively on issues arising in connection with their concurrent powers to apply the competition prohibitions under EU law.
34. **Preparations for EU exit:** The CMA has been considering the potential changes to the competition regime and the impact on concurrency in light of the UK's exit from the EU. The CMA has been liaising with regulators and preparations for EU exit have frequently been discussed at regular UKCN and bilateral meetings. The CMA has a formal role in advising government and has been engaging with government about legislative requirements for the competition regime after EU exit and on arrangements during any post-exit implementation and/or transition period. The CMA is also considering how to maintain existing – and forge new, strong, mutually beneficial and cooperative – relationships with other agencies, including the European Commission, with a view to promoting effective and consistent competition law and policy overseas for the benefit of UK consumers.
35. **UKCN:** The mission of the UKCN is to promote competition for the benefit of consumers and to prevent anti-competitive behaviour, both through facilitating use of competition powers and the development of pro-competitive regulatory frameworks, as appropriate. The UKCN has continued to work well throughout the period of this report. There have been regular meetings of the UKCN Chief Executives as well as of senior director and working level officials. The CMA and regulator Chairs also meet when needed to discuss competition and regulatory issues. The UKCN provides a valuable forum for discussion and the sharing of experience and best practice. During the period of this report, the UKCN has regularly discussed lessons learnt from competition enforcement cases and markets work as well as other topical issues, including, for example, the use of the CMA's and regulators' power to ask questions under section 26A of the Competition Act 1998 and the implications of the revised market investigation process for regulators at Phase 1.

36. It was noted in the 2017 Annual Concurrency Report that there had been greater coordination between the UKCN and the UKRN. This greater coordination has continued with meetings of the UKCN and UKRN Chief Executives being held jointly and ongoing meetings between the CMA's Sector Regulation Unit²¹ and the UKRN's Director to identify issues of common interest and minimise unnecessary duplication.
37. **Regular bilateral meetings:** Alongside the interactions taking place in the context of the UKCN, bilateral meetings are held on a quarterly basis at working level between the CMA's Sector Regulation Unit and each sector regulator. These meetings facilitate the effective enforcement of competition law through the sharing of expertise, information, ideas and experience in relation to specific cases as well as discussion of other projects to promote competition. In addition, there are meetings at Chair and Chief Executive level as well as at senior director level between the CMA and each sector regulator and also *ad hoc* contacts as the need arises.
38. **Case Decision Groups working group:** a working group has recently been set up to allow UKCN regulators to share know-how and best practice for the use of Case Decision Groups in Competition Act 1998 cases.
39. **UKCN consumer remedies project:** The UKCN consumer remedies project arose from a recommendation by the National Audit Office (NAO) that the CMA and the sector regulators should '[d]evelop further their understanding of consumer behaviour to inform proposed remedies'. It was launched in June 2016. The project outputs so far include a knowledge bank, which constitutes an archive of academic and policy documents relevant to the design, implementation and testing of consumer-facing remedies, and five completed workshops (co-chaired by the CMA and the FCA) on diverse topics regarding consumer-facing remedies, including the linkages between customer behaviour and remedies; enhancing the impact of consumer remedies through research; how to design, select and test remedies in a practical context; learning from and collaborating with the private sector; and designing remedies that work for vulnerable consumers. The project is now in its final phase and will publish a short "lessons learnt" report and host an end of project conference in 2018. It has proven highly beneficial in enabling the regulators to learn from each other and external experts, demonstrating thought leadership on the topic, building a network of policymakers and fostering the UK's competition concurrency regime.

²¹ The Sector Regulation Unit exists within the CMA to facilitate day-to-day contact with the sector regulators, co-ordinate the UKCN and undertake policy work aimed at achieving more competitive outcomes for consumers within the regulated sectors.

40. **Leniency:** In November 2017, the CMA, with the endorsement of the sector regulators that are the other full members of the UKCN, published an information note regarding the arrangements for handling leniency applications in the regulated sectors. The information note sets out the arrangements that had been operating informally involving the ‘single queue system’ and also provides that going forward all leniency applicants should in the first instance approach the CMA by calling the CMA’s leniency number in order to secure their place in the leniency queue (subject to their meeting the relevant conditions of leniency). The information note provides certainty and clarity to businesses and individuals on the arrangements for the handling of leniency applications in the context of the competition concurrency regime.
41. **Competition awareness training:** The CMA and regulators regularly undertake staff development training to help ensure their staff are aware of the latest developments in competition law. Training is regularly shared between the CMA and the regulators, with, for example, regulators being invited to participate in CMA Academy training and to attend events hosted by the CMA, and regulators hosting training to which other regulators are invited (for example, awareness seminars on barriers to entry given by ORR). The CMA also gives presentations and training at other regulators, such as a presentation on competition impact assessments at the ORR, and has supported all-staff competition awareness training at the NIAUR.
42. **Support on policy work:** There is close and ongoing mutual support between the CMA and sector regulators on policy work in the UKCN and on a bilateral basis. This has included sharing of expertise, as well as discussion of approaches to competition issues in the various sectors. For example, Ofwat has engaged with the CMA about the CMA’s energy market investigation and DCT market study reports, with a view to helping inform policy thinking with respect to the water sector’s new business retail market. NIAUR hosted a stakeholder roundtable to discuss measures to enhance the operation of the Northern Ireland small business energy market which Ofgem participated in to share its learnings from the market in Great Britain.
43. **Secondments:** Secondments are an important means of sharing and transferring skills, expertise and resource between the CMA and the regulators. The CMA and the regulators continue regularly to arrange a variety of secondments for a range of purposes, in line with the secondment principles agreed by the UKCN in 2017,²² ensuring that regulators and the

²² CMA, [UKCN secondment principles](#), March 2017.

CMA have access to a broad range of skills and expertise as appropriate to assist in their competition work.

Progress of the concurrency arrangements

44. This year has seen continued progress in the effectiveness of the operation of the concurrency regime, both in terms of an increase in new cases being opened under the Competition Act 1998 and ongoing levels of cooperation between the CMA and the regulators. Indeed, the CMA has observed a step-change in the breadth and depth of the relationships between the CMA and the sector regulators over the last couple of years. Those relationships have evolved on the back of the work undertaken in the first years of the new concurrency arrangements to put in place the building blocks for more effective competition enforcement in the regulated sectors.
45. As noted above, during the period of this report, four new Competition Act 1998 cases involving the regulated sectors have been opened. This contrasts favourably with the previous two reporting years, in which two cases were opened in each year (although we note that six cases were opened in the first year of the new concurrency arrangements).
46. While the CMA is pleased to see an increase in the number of Competition Act 1998 cases being opened this year, it has always indicated that the number of cases is only one factor in assessing the impact of the concurrency arrangements. As explained previously, competitive outcomes can be and are being achieved through various means such as markets and other work to promote competitive outcomes.
47. Furthermore, the CMA considers that the project²³ it has undertaken with the regulators in the previous reporting period to understand what barriers and opportunities exist for competition investigations and whether more needs to be done to increase the volume and effectiveness of Competition Act 1998 enforcement in regulated sectors has had an impact. It has contributed not just to close cooperation between the CMA and the regulators but to more effective competition enforcement, and has therefore yielded positive outcomes beyond the mere number of Competition Act 1998 cases being opened.

²³ For further details of the project undertaken in the previous reporting period, see paragraphs 44 to 48 of the [Annual report on concurrency 2017](#).

48. In particular, during the current reporting period, the CMA notes the following positive developments with regards to competition enforcement and other areas:

- (a) There have been increased levels of sharing of know-how and expertise between the CMA and the regulators. This may in part reflect the early and more extensive engagement on Competition Act 1998 cases (see further paragraph 48(b) below) or the fact that a number of regulators have reached a critical stage in their cases. The CMA continues to provide support to the regulators based on its own extensive experience of the procedural and substantive issues that arise in Competition Act 1998 cases. For example, the CMA has advised during the year on procedural issues related to carrying out inspections, access to files (and it continues to offer secondments to the CA98 Registry that it has set up to manage case files), the handling of leniency applications, the issuing of statements of objections and the operation of case decision groups.

This sharing of know-how and expertise has been two way. For example, several regulators have shared their experience of exercising the power to ask questions under section 26A of the Competition Act 1998 with the CMA, including Ofgem which presented on this topic to the UKCN. The PSR has shared its learnings from the inspections that it conducted in its first Competition Act 1998 case with the CMA.

An interesting development during this period has been the launch by the CMA of two cases in the regulated sectors: one in relation to retail MFN clauses for home insurance products and the other in relation to facilities at airports. In both cases there were specific reasons why the CMA was better placed than the relevant sector regulators (the FCA and the CAA) to carry out the investigation. However, in both cases, the CMA is working closely with the relevant regulator to ensure that it has access to the relevant sector expertise. These cases highlight how effective the concurrency arrangements can be at harnessing the complementarity of skills of the CMA and the regulators.

- (b) One of the measures that the CMA took following the project that it ran in the last reporting period was to offer to engage in discussions with the regulators at an early stage of Competition Act 1998 cases to discuss scoping, planning, development of theories of harm, as well as other substantive topics and procedural matters. The CMA has done this, for example, by seconding economists at an early stage in a case (or sometimes at the point at which a regulator is assessing whether to launch a case) to help develop the economic theories of harm to pursue in the case. Furthermore, as noted in the 2017 report, the CMA commonly

forms a team of competition experts for investigations who now often get involved in advising the investigating authority ahead of the formal point at which that authority is obliged to share information (such as drafts of key documents such as statements of objection, commitments decisions and infringement decisions) with the supporting authority.²⁴

This has occurred in a number of ongoing cases and is one of the real benefits to have been realised as a result of the strong working relationships that have developed. This allows for a greater contribution to each other's work and ensures that concerns and issues can be discussed at a formative stage of a case, ie at a point at which the sharing of expertise can enable the investigating authority to progress the case more effectively.

- (c) The CMA has sought to share innovations in the way that it enforces Competition Act 1998 cases with the other regulators. For example, in December 2016, the CMA secured a disqualification of a director of a company that had breached the Competition Act 1998 from holding any directorship of a UK company for the next five years.²⁵ This was the first time a director disqualification had been secured for a competition law infringement since the UK competition authorities were given this power in 2003. The CMA shared its learnings and approach with the other regulators at a UKCN meeting. It has since discussed the scope and process for obtaining such disqualifications with individual regulators in the context of their cases and plans further discussions at the UKCN in light of its developing experience.²⁶
- (d) There have been good examples of the CMA and regulators working together collectively through the UKCN to develop guidance, share know-how or best practice. The publication in November 2017 of the information note on the handling of leniency applications in the regulated sectors (see further paragraph 4035 above) was the culmination of an extensive project which provided welcome clarity to stakeholders about how leniency operates in cases in the regulated sectors. Another example is the working group on case decision groups that has been set up (see further paragraph 38 above).

²⁴ The obligation to share information arises under Regulation 9 of the [Concurrency Regulations](#).

²⁵ Online sales of posters and frames, [Case 50223](#).

²⁶ Although after the end of the relevant reporting period, the [CMA secured disqualifications of two directors](#) in a second case in April 2018 involving breaches of competition law by estate agents in Somerset

- (e) As noted in the 2017 report, secondments are an important means of sharing and transferring skills, expertise and resource as well as enhancing concurrency through the building of relationships between concurrent regulators. As part of the project carried out in the previous period, a set of secondment principles were developed by the UKCN which captured the various different types of secondment that can be arranged.²⁷ As noted earlier in this Introduction, secondments between the CMA and the regulators have continued during this period and have provided an important means by which the CMA and the regulators can address any resource or expertise needs necessary to deliver cases effectively and in a timely fashion.
- (f) The CMA and the regulators have worked together on various markets cases. For example, the CMA is liaising with the FCA and building on its sector expertise following the FCA's market investigation reference relating to investment consultants. The CMA also engaged with all the regulators in the DCTs market study and continues to work with them both through the UKRN and individually on the implementation of the recommendations that it made. Although not formally part of the concurrency arrangements, close cooperation has occurred in relation to other policy work and mergers work, examples of which have been given above and in the chapters that follow.
49. In the 2017 report, the CMA observed that its engagement with the regulators and the work undertaken to enhance the operation of concurrency had highlighted the value and importance of the concurrency arrangements. As has been demonstrated during this reporting period, the step-change in the breadth and depth of cooperation has had positive outcomes both in terms of sharing expertise, enhancing the effectiveness of enforcement, driving consistency, ensuring that competition enforcement remains high on the agenda and facilitating the promotion of competition in the regulated sectors.

²⁷ See paragraph 43 above.

B. Competition and Markets Authority

50. The Competition and Markets Authority (CMA) is the UK's primary competition and consumer authority. The CMA is an independent non-ministerial government department with responsibility for carrying out investigations into mergers, markets and the regulated industries and enforcing competition and consumer law.
51. The CMA shares concurrent powers with the regulators to apply competition law in the regulated sectors. The CMA plays a leadership role in overseeing the operation of the concurrency arrangements and works with the sector regulators to promote competition in their area of responsibility.^{28, 29}
52. The focus of this chapter is primarily on cases in regulated sectors in which the CMA has taken the lead. Other work in which the CMA has cooperated with the regulators is generally described in the Introduction.

General developments since April 2017 from a competition or policy perspective

Enforcement

53. The CMA's enforcement activity across the economy as a whole has increased in the last three years. The CMA (or its predecessor the Office of Fair Trading (OFT)) opened an average of 6.8 competition enforcement cases a year in the period 1999 to 2015. By contrast, during the relevant reporting period, the CMA has opened ten cases.
54. Since April 2017, the CMA has issued five infringement decisions – plus two other cases where it accepted commitments to cease the practice that gave rise to competition concerns, and a further decision where the CMA decided that there were no grounds for action. That is a total of seven decisions in the relevant reporting period with fines ranging from around £370,000 to £3.4 million.

²⁸ The revised non-binding '[strategic steer](#)' that the government issued to the CMA in December 2015 requested the CMA to continue "playing a leadership role with regulators that have competition powers, especially those that are new to the concurrency regime. The CMA should encourage those regulators to make greater use of their competition powers and to tackle anti-competitive actions in regulated markets."

²⁹ Since the end of the relevant reporting period and before publication of this report, the government has published for consultation a draft new strategic steer which requires the CMA to "lead work with sector regulators to ensure the overall competition regime is co-ordinated and that consumers are protected from illegal and anti-competitive practices" (see Annex A to [Modernising Consumer Markets: Consumer Green Paper](#)).

55. The CMA has sought to make full and appropriate use of the range of powers that Parliament has conferred on it, deploying its various ‘tools’ flexibly in response to the specific circumstances of individual cases. The following examples of the CMA’s use of those powers arose in the period since April 2017:

(a) The CMA has made some use of its interim measures powers.³⁰ During November 2016, the CMA received an application for interim measures in its online auction bidding platforms case. Shortly before the CMA was due to make a final decision in June 2017 on whether to impose interim measures, the party concerned offered commitments permanently ending that practice, which the CMA considered it appropriate to accept. While interim measures were not ultimately imposed in this case, it is an example of how the CMA was able to resolve a competition problem within just over six months in a fast-moving market.³¹

(b) The CMA has also demonstrated that it is prepared to use its power to withdraw immunity from fines where appropriate. In August 2017, the CMA decided to withdraw immunity³² from a supplier of mobility scooters that had entered into agreements with three retailers requiring them either not to advertise their prices online, or not to do so below specified prices. Four years earlier, a warning letter had been sent to that supplier (and to other mobility scooter suppliers) warning that such restrictions on online advertising would, in the CMA’s view, infringe the Chapter I prohibition. The withdrawal of immunity in this case has been effective in bringing the anti-competitive practice to an end: the supplier ended the restrictions and agreed to inform its retailers.³³

56. The mobility scooters case showed that ignoring warning letters carries real risks. This is further reinforced by two CMA infringement decisions, one involving resale price maintenance in lighting and the other involving market

³⁰ These are powers which are available when the CMA considers it necessary to act urgently to prevent significant damage.

³¹ [Auction services: anti-competitive practices](#).

³² [Competition Act 1998](#) section 39, read with The Competition Act Small Agreements and Conduct of Minor Significance) Regulations 2000 ([SI 2000/262](#)), provides that parties to an agreement infringing the Competition Act prohibition on anti-competitive agreements will be immune from being fined for the infringement if the combined turnover of all parties to the agreement does not exceed £20 million (provided that it is not a price-fixing agreement). This immunity is intended to make the Competition Act 1998 less onerous for small businesses. The CMA has discretion to withdraw immunity if it considers that an agreement which it is investigating is likely to infringe the Chapter I prohibition.

³³ [Mobility scooters: anti-competitive practices](#).

sharing in clean room laundries. In both cases, the penalty imposed was uplifted because the CMA had previously sent a warning letter.

Screening for cartels tool

57. During the period of this report, the CMA launched a digital tool to help fight bid-rigging. Bid-rigging is a serious form of illegal behaviour that can cause public authorities to overpay when buying goods and services. The Screening for Cartels tool will help public procurement professionals identify suspicious behaviour by suppliers when bidding for contracts. The tool uses algorithms to spot unusual bidder behaviour and pricing patterns which may indicate that bid-rigging has taken place. The CMA encourages procurement professionals to report concerns via its cartels hotline.³⁴
58. The tool has been shared with the regulators and competition authorities outside the UK.

Changes to market investigations

59. In 2017, the CMA undertook a review of the way it conducts market investigations. Having consulted on proposed changes which reflected its experiences in carrying out market investigations under the Enterprise Act 2002 and various legislative changes,³⁵ the CMA made the following changes in July 2017 to streamline its existing processes and help it meet the shorter statutory timescale:³⁶
 - (a) Assessing potential remedies at an earlier stage in the investigation, alongside the diagnosis of any issues;
 - (b) Reducing the number of formal publication and consultation stages;
 - (c) Earlier interaction with stakeholders during the investigation, including holding hearings at an earlier stage in the process;
 - (d) Allowing market studies to carry out preparatory work for market investigations when they are likely to lead to a full investigation; and
 - (e) Introducing the option for the CMA board to give an advisory steer on the scope of the market investigation, which the independent group of CMA

³⁴ Further information on the CMA's cartel hotline may be found at: <https://stopcartels.campaign.gov.uk/>

³⁵ The changes came into force in 2014 and resulted in the reduction in the time limit for market investigations from two years to 18 months.

³⁶ CMA, [Updated guidance on the CMA's approach to market investigations](#), July 2017.

panel members running the investigation would be expected to take into account in making its decisions.

60. The CMA believes these changes will enable it to carry out market investigations more quickly, without reducing their effectiveness. The CMA has discussed the impact of the changes with the sector regulators, using the investment consultancy services and fiduciary management services market investigation reference, which resulted from the FCA's Asset Management market study, as a basis for exploring the implications for the regulators of the new processes.

Review of remedies

61. The CMA has continued to carry out systematic reviews of remedies that were imposed following past mergers and market investigations. During the period of this report, the CMA published final decisions in cases in the regulated sectors involving the release of undertakings in three water merger remedies that were given before 1 December 2007. The CMA also published its final decision agreeing to remove Rough gas storage undertakings following a request from its owners who deemed the North Sea gas storage facility unsafe and had decided to end storage operations there.

Cases under the competition prohibitions since April 2017

62. The CMA is currently investigating two Competition Act 1998 cases in the regulated sectors:
- (a) The CMA opened an investigation in September 2017 into suspected breaches of the Chapter I prohibition of the Competition Act 1998 and Article 101 of the Treaty on the Functioning of the EU through the use of certain retail 'most favoured nation' (MFN) clauses by a price comparison website in relation to home insurance products. Retail MFN clauses in online retailing require the provider of a product (good or service) to price that product via the online outlet (in this case, the price comparison website) at a price that is as low or lower than the price at which the product is sold at rival outlets. Evidence concerning the use of wide MFN clauses³⁷ in this case came to the CMA's attention during the course of its market study into digital comparison tools (DCTs).

³⁷ Wide MFN clauses are ones where the rival outlets covered by the retail MFN clause include rival comparison websites.

The investigation involves the provision of financial services, in respect of which the CMA and the FCA have concurrent functions. The case was allocated to the CMA on the basis of its experience of considering MFN clauses, the wide range of sectors in which such clauses may be in use, and the potentially broader competition policy implications of such clauses. However, the CMA is working closely with, and receiving support from, the FCA, making use of the FCA's sector expertise.

- (b) In December 2017, the CMA opened an investigation into suspected breaches of competition law in relation to facilities at airports under Chapter I of the Competition Act 1998. The CAA assisted the CMA's assessment which led to the investigation and agreed that it was appropriate for the CMA to be the investigating authority. While the investigation involved airport services, the CMA and the CAA agreed that the case should be allocated to the CMA for reasons that included the potential for the investigation to uncover issues extending outside the CAA's jurisdiction and the scope for a CMA investigation to have a greater deterrence effect in sectors beyond those which are the focus of the investigation. The CAA is providing support, including a secondee, and its sector expertise to the CMA.

Market investigations since April 2017

Investment consultants

63. The FCA referred the supply and acquisition of investment consultancy services and fiduciary management services to and by institutional investors and employers in the UK to the CMA for an in-depth market investigation in September 2017. The investigation covers:
- (a) investment consultancy services, which means the provision of advice in relation to strategic asset allocation, manager selection, fiduciary management, and advice to employers in the UK; and
 - (b) fiduciary management services, where the provider makes and implements decisions for the investor based on the investor's investment strategy in the UK.
64. The CMA is investigating whether there are any market features which prevent, restrict or distort competition. If it finds any adverse effects on competition, the CMA will decide whether and, if so, what action is needed to resolve them. The statutory deadline for this market investigation is during March 2019.

Update on the implementation of market investigation remedies

65. The 2017 Annual Concurrency Report noted that the CMA had published its final reports in two market investigations, energy³⁸ and retail banking.³⁹ In the past year, significant progress has been made in implementing the remedies identified in the respective final reports.

Energy market investigation

66. Following referral of the energy market in Great Britain to the CMA for investigation by Ofgem,⁴⁰ the CMA's energy market investigation concluded in June 2016 and identified a series of adverse effects on competition. The CMA recommended a package of 26 remedies to Ofgem (out of more than 30 in the final report),⁴¹ with the aim of making competition in the market more effective, most significantly by increasing consumer activity and engagement, and therefore putting additional pressure on energy retailers to compete.
67. The following are the main milestones that took place over the period of this report:
- (a) The CMA's prepayment price cap took effect from 1 April 2017. Initially set by the CMA's order, Ofgem updates the cap on a six-monthly basis and monitors and enforces compliance;
 - (b) The CMA's price transparency remedy for microbusinesses⁴² came into effect in June 2017. This remedy requires all energy suppliers to include a price quotation tool on their website, allowing microbusinesses to find out about the tariffs available to them more easily. Ofgem has been providing

³⁸ CMA, [Energy market investigation, final report](#), June 2016.

³⁹ CMA, [Retail Banking market investigation, final report](#), August 2016.

⁴⁰ The terms of reference for the energy market investigation allowed the CMA to look at any competition issue connected with the supply or acquisition of gas and electricity in Great Britain, including both retail and wholesale markets, except that, in the case of retail markets, only the retail supply of households and microbusinesses were included within the reference.

⁴¹ The other remedies were aimed at the National Grid, gas and electricity suppliers, gas transporters, Citizens Advice and the Department for Energy and Climate Change (now Business, Energy and Industrial Strategy).

⁴² The terms of reference for this market investigation covered the supply of energy to microbusinesses, applying Ofgem's definition. Ofgem's definition of a microbusiness was a non-domestic customer that meets at least one of the following criteria:

- (a) it employs fewer than ten employees (or their full-time equivalent) and has an annual turnover or balance sheet no greater than €2 million; or
- (b) it consumes no more than 100,000 kWh of electricity per year; or
- (c) it consumes no more than 293,000 kWh of gas per year.

the CMA with support on its monitoring and enforcement of compliance with this remedy;

- (c) The CMA's remedy for customers on restricted meters⁴³ came into effect in September 2017. This remedy requires that these customers are offered the same range of tariffs as single-rate meter customers without having to change either their meter or the wiring of their homes. This significantly reduces the switching costs for these customers; and
- (d) Ofgem has carried out trials both of prompts to help domestic energy customers engage and of how the database can be used to facilitate switching among customers who have been on a standard variable tariff for three or more years. Ofgem has published the results of these trials, which are promising,⁴⁴ and is developing plans for further trials this year. The CMA continues to support Ofgem with this work.

- 68. In February 2018, BEIS published the government's formal response to the CMA's energy market recommendations. The government is supportive of the majority of the CMA's recommendations and is now taking forward their implementation. The CMA's recommended remedies will reduce the cost of energy to domestic customers in Great Britain by making it easier for customers to identify and switch to a better deal, by facilitating the development of smart home technology, and by strengthening Ofgem's powers to ensure that industry codes work effectively in the interests of consumers.
- 69. Ofgem has continued to implement the CMA's other recommendations and these have largely been completed. In addition, Ofgem decided in December 2017 to extend the CMA's prepayment price cap to domestic customers who receive the Warm Home Discount. It has consulted on ways to design a price cap for a broader group of vulnerable consumers. Furthermore, at the same time as publishing its response, the government has introduced legislation to Parliament to put in place a temporary price cap on all standard variable tariffs and fixed term default deals.⁴⁵ See the Ofgem chapter for further information.

⁴³ Restricted meters include any metering arrangement whereby a domestic customer's consumption at certain times and, in some cases, for certain purposes (for example, heating) is separately recorded. These meters allow for customers to be charged lower rates for electricity used at times when overall demand is lower.

⁴⁴ The results to date have shown significant increases in switching rates amongst customers receiving the prompts. Moreover, those customers who have switched have saved an average of between £130 and £200 per year.

⁴⁵ In February 2018, BEIS announced that the Domestic Gas and Electricity (Tariff Cap) Bill had been introduced to Parliament.

Retail banking market investigation

70. The CMA's market investigation into the supply of retail banking services to personal current account customers and to small and medium-sized enterprises⁴⁶ (SMEs) in the UK⁴⁷ 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 the benefits of new technology are fully exploited.
71. The CMA accepted undertakings in January 2017 from Bacs and in February 2017 published the Retail Banking Market Investigation Order, which together set out the requirements on banks and Bacs to implement the remedies set out in the market investigation final report. The other elements of the CMA's remedies package were put in place through recommendations made to the FCA, HMT and BEIS. The FCA's progress in implementing those remedies addressed to it is set out in the FCA chapter below.
72. Most elements of the CMA's remedies package are now in place:
- (a) Open Banking, which will provide greater ability for customers and businesses to compare banking options and enable the delivery of innovative new services, launched in January 2018;
 - (b) Overdraft remedies started to come into effect in August 2017, with banks introducing a maximum monthly charge for unarranged overdraft fees. This was supplemented in February 2018 with banks providing customers with text alerts when they start, or are about to start, using an unarranged overdraft facility. As further explained in the FCA chapter, the FCA has also been making good progress on its programme of researching and testing further overdraft text alert programmes, in response to the CMA's recommendations; and
 - (c) SMEs have started to benefit from measures to increase loan and overdraft price transparency, which came into effect in August 2017. This has been supplemented in February 2018 with the largest banks in Great

⁴⁶ A small and medium-sized enterprises was defined as a business that, in respect of a given financial year applying to it, has annual sales revenues (exclusive of VAT and other turnover-related taxes) not exceeding £25 million.

⁴⁷ In relation to personal customers, the terms of reference included only the supply of personal current accounts, 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

Britain making available loan price and eligibility tools.⁴⁸ SMEs also now benefit from streamlined business current account opening processes, introduced from February 2018. Bacs has made good progress implementing the requirements in its undertakings to improve current account switching, including extending the Current Account Switching Service (CASS) redirection period and appointing an independent chair and independent members to its executive committee. The PSR has also started to monitor the performance of CASS against the Key Performance Indicators that Bacs agreed with HMT.

73. From August 2018, banks will start publishing comparable information on core service quality metrics on a six-monthly basis. These will be supplemented by additional service quality metrics being introduced by the FCA, following the CMA recommendations to it. The Nesta Open Up Challenge,⁴⁹ an innovation challenge aimed at increasing the comparability of SME banking services, is due to complete in Autumn 2018. Stage 1 of the Open Up challenge was completed in December 2017 and resulted in ten winners who developed a range of innovative products to aid SMEs.
74. 2018 and beyond will see further progress on the implementation of Open Banking, with enhancements planned for August 2018 and February 2019. The CMA has also worked closely with the FCA and HMT to ensure that the development and implementation of Open Banking aligns with the introduction of the second Payments Services Directive (PSD2).

Market studies since April 2017

Digital comparison tools

75. The CMA published its final report into DCTs in September 2017 and work is now ongoing to implement the recommendations, including by the UKRN and various regulators as set out in more detail in the Introduction (see paragraphs 9 to 15).

⁴⁸ These tools provide SMEs with an indicative price quote and indication of their eligibility for the lending product they are enquiring about.

⁴⁹ The CMA found that SMEs lack tools providing comprehensive information about bank charges, service quality and credit availability. One of the CMA recommendations was to support the independent charity Nesta in a new initiative to address this, requiring banks to provide Nesta with financial backing and technical support, alongside introducing a range of other measures targeted at small businesses such as a loan eligibility tool. For further information, please see [Nesta Open Up Challenge](#).

Heat networks

76. In December 2017, the CMA launched a market study into heat networks, systems that heat multiple homes from one central source. Heat networks form an important part of government strategy to reduce carbon and cut heating bills. They currently supply around half a million UK homes through about 17,000 networks, and this is expected to grow significantly to around 20% of all households by 2050.
77. While heat networks may have wider benefits, the sector is not currently subject to the same regulation as other forms of energy supply such as mains gas and electricity. The CMA is concerned that many customers may be unable to easily switch suppliers or are locked into very long contracts – some for up to 25 years – and that there is a risk they may be paying too much or receiving a poor quality of service.
78. An interim report with the CMA's initial findings and views on potential remedies and whether a market investigation reference is required will be produced by June 2018 with a final report due to be published by December 2018. Ofgem is assisting the CMA by sharing its knowledge of regulation and consumer protection in the energy sector.

Other market studies in regulated sectors

79. As noted in previous reports, the CMA has also undertaken work in non-concurrent regulated sectors, involving legal services and care homes.
80. Following completion of the market study into the provision of legal services in December 2016,⁵⁰ a Remedies Programme Implementation Group was formed to oversee the implementation of the recommendations made by the CMA to the legal service regulators. During the period of this report, the regulators published their action plans for implementing the CMA's recommendations in relation to price transparency, enhancing Legal Choices and publication of regulatory data.⁵¹ They have also published their consultations on proposed regulatory changes to drive increased transparency.

⁵⁰ See paragraph 12 of the [Annual report on concurrency 2017](#) for an overview of the key findings of the study.

⁵¹ The [Legal Services Board](#) has published its assessment of the sufficiency of these action plans.

81. In December 2017, the CMA published its final market study report into residential and nursing care homes for older people.⁵² The UK-wide market study identified two broad areas of concern:
- (a) Those requiring care need greater support in choosing a care home and greater protections when they are residents; and
 - (b) The current model of service provision cannot be sustained without additional public funding, with significant reforms needed to enable the sector to grow to meet the expected substantial increase in care needs.
82. The CMA made a set of recommendations to governments, sector regulators,⁵³ local authorities, and the industry to address these concerns. In addition, the CMA opened an investigation in June 2017 into a number of care home providers, due to concerns that some of the contract terms and/or practices they use may breach consumer law. In January 2018, the CMA also opened a consultation on draft consumer law advice for UK care home providers for the elderly.

Mergers

83. The CMA has also worked to promote competitive outcomes for the benefit of consumers with respect to mergers in the regulated sectors. Where appropriate, it has worked closely with the relevant sector regulators, in particular, to take advantage of their sector expertise.

Water

84. The CMA investigated and cleared the anticipated non-household retail water and sewerage services joint venture between Anglian Water Group Ltd and Northumbrian Water Group Ltd.⁵⁴ The water merger regime involves significant cooperation between the CMA and Ofwat to consider the case within the first phase deadline.

⁵² CMA, [Care homes market study, final report](#), December 2017.

⁵³ The sector regulators that inspect care homes are: the Care Quality Commission in England; the Regulation and Quality Improvement Authority in Northern Ireland; the Care Inspectorate in Scotland; and the Care and Social Services Inspectorate Wales.

⁵⁴ [Anglian Water / Northumbrian Water merger inquiry](#).

Communications

85. The CMA has undertaken a number of merger assessments which have involved input from Ofcom. Notably, there have been two public interest interventions,⁵⁵ Hytera/Sapura and 21st Century Fox (Fox)/Sky.
86. In the Hytera case, the Secretary of State for BEIS accepted statutory undertakings in May 2017 from the parties involved in the proposed acquisition which meant that the merger was not referred to the CMA for a further assessment.⁵⁶
87. In Fox/Sky, the Secretary of State for Digital, Culture, Media and Sport referred the acquisition by Fox of Sky on two public interest grounds in September 2017. The first, the impact on media plurality, requires the CMA to assess whether there will be a sufficient plurality of persons with control of the media enterprises serving audiences in the UK following the merger. The second public interest test is whether Fox has a genuine commitment to broadcasting standards, and is the first time a referral on these grounds has been made. This was following a Phase 1 report to the Secretary of State by Ofcom. The CMA published its provisional findings in January 2018 that Fox had a genuine commitment to broadcasting standards, but that the merger was against the public interest as it would result in insufficient media plurality. The CMA set out a range of potential remedies for consultation, including the prohibition of the merger, the divestment or spin-off of Sky News and behavioural remedies designed to limit the ability of the Murdoch Family Trust to exercise increased influence over Sky News.⁵⁷ Throughout the CMA's investigation, Ofcom provided a range of assistance. To aid transparency, the CMA and Ofcom published the basis for Ofcom's assistance during the investigation, along with all information requests to Ofcom and their respective responses.

⁵⁵ In certain circumstances, the Secretary of State can intervene under the [Enterprise Act 2002](#) in cases which meet the following public interest considerations: national security (including public security); plurality and other considerations relating to newspapers and other media; and the stability of the UK financial system. The Enterprise Act 2002 allows the Secretary of State to create additional public interest considerations where it is felt necessary, following approval by Parliament. In such cases, the CMA is responsible for the overall assessment and for the final decision on any competition aspects of the merger. However, responsibility for making the final decision in relation to the specified public interest in both Phase 1 and Phase 2 lies with the Secretary of State, and this can overrule any competition issues identified by the CMA.

⁵⁶ See BEIS, [Proposed acquisition of Sepura plc by Hytera Communications Corporation Ltd: decision notice](#), May 2017.

⁵⁷ [21st Century Fox / Sky merger inquiry](#).

Rail

88. The CMA raised concerns that awarding the South Western rail franchise to FirstGroup and MTR could reduce competition on the London–Exeter route, leading to higher fares or worse services for passengers. The CMA accepted undertakings in lieu of a reference for a more in-depth ‘phase 2’ investigation.⁵⁸
89. In March 2018, the CMA has also developed guidance for the evaluation of competition issues in rail franchise awards.⁵⁹

Financial services

90. The CMA routinely engages with the FCA and PSR in financial services and payment systems mergers.
91. In particular, the CMA undertook phase 2 investigations of the acquisition by Cardtronics of rival ATM provider, DirectCash Payments,⁶⁰ and the proposed global merger between ATM providers, Diebold Nixdorf and Wincor.⁶¹ The CMA cleared the Cardtronics acquisition in September 2017. Following a finding of a substantial lessening of competition in the Diebold/Wincor merger, the purchase by Cennox (a UK-based specialist ATM services group) of Diebold’s UK business was subsequently approved by the CMA in June 2017 and brought the merger investigation to a close. In addition, during the period of this report, the CMA cleared the anticipated acquisition by Standard Life plc of Aberdeen Asset Management PLC.⁶²
92. As noted in the 2017 Annual Concurrence Report, the CMA prohibited the merger of Intercontinental Exchange (ICE) and Trayport. The merger involved discussions between the CMA, Ofgem (which monitors the wholesale energy market) and the FCA which provided their respective expertise on the energy trading market and the firms involved. In March 2017, following a challenge by ICE, the Competition Appeal Tribunal upheld the CMA’s findings that the merger between the two companies was likely to result in a loss of competition and that in order to resolve this, ICE must sell the Trayport

⁵⁸ The undertakings involved a price cap on unregulated fares between London and Exeter on both South Western and GWR services, with ticket prices on the route being linked to those on a number of other comparable services to ensure they are kept in line with the market. The companies have also offered to maintain the availability of cheaper advance fares on both services, again by linking them with similar routes.

⁵⁹ CMA, [Rail franchises: Guidance for bidders](#), March 2018.

⁶⁰ [Cardtronics / DirectCash Payments merger inquiry](#).

⁶¹ [Diebold / Wincor Nixdorf merger inquiry](#).

⁶² [Standard Life / Aberdeen Asset Management merger inquiry](#).

business. However, the CMA was asked by the Tribunal to reconsider its additional requirement that the companies terminate an agreement entered into during the original investigation and which would significantly expand their commercial relationship. The requirement for ICE to sell the Trayport business was put on hold until the remittal investigation was concluded. The CMA made its decision in July 2017 that the agreement should be terminated, and the inquiry was closed after the sale of Trayport to ‘approved-buyer’ TMX Group in December 2017.⁶³

Healthcare

93. Three hospital mergers qualified for merger investigation during the period of this report. The CMA looked at the impact on healthcare of the proposed merger between Central Manchester University Hospitals NHS Foundation Trust and University Hospital of South Manchester NHS Foundation Trust at Phase 2.⁶⁴ The CMA also cleared two different NHS hospital mergers on the basis of patient benefits at the ‘Phase 1’ stage: the anticipated merger between University Hospitals Birmingham NHS Foundation Trust (UHB) and Heart of England NHS Foundation Trust,⁶⁵ and the merger between Derby Teaching Hospitals Foundation Trust and Burton Hospitals Foundation Trust.⁶⁶
94. The CMA worked closely with NHS Improvement (NHSI), which has a statutory role in providing advice to the CMA on the patient benefits expected from a merger involving NHS Foundation Trusts. This proved to be key in each of these cases, as the CMA was able to allow the mergers to proceed on the basis that the benefits to patients outweighed any adverse effect from a lessening of competition. The CMA’s ability to review these cases efficiently also benefitted from its ongoing work with NHSI on how to assess mergers in the NHS. In particular, this ongoing work continues to help the CMA prioritise which health mergers should be reviewed at Phase 1 and which do not, ensuring that patients get a good outcome while not requiring the diversion of NHS resources to unnecessary merger reviews.

⁶³ [Intercontinental Exchange / Trayport merger inquiry.](#)

⁶⁴ [Central Manchester University Hospitals / University Hospital of South Manchester merger inquiry.](#)

⁶⁵ [University Hospitals Birmingham / Heart of England merger inquiry.](#)

⁶⁶ [Derby Teaching Hospitals / Burton Hospitals merger inquiry.](#)

Air

95. The 2017 Annual Concurrency Report noted that the CMA found a realistic prospect of an SLC at Aberdeen Airport arising from the acquisition by Menzies Aviation plc and Menzies Aviation Inc. of ASIG Holdings Limited and ASIG Holdings Corp. The CMA accepted undertakings in lieu of reference from Menzies in April 2017 (to sell the ground handling business of ASIG at Aberdeen Airport) to remedy the identified concerns.⁶⁷

Energy

96. In February 2018, the CMA opened its Phase 1 investigation into the merger of SSE Retail and Npower. As the relevant sector regulator, Ofgem has both assisted the CMA in understanding the market, including by providing data to help the CMA complete its analysis, and provided its views on the merger. In April 2018,⁶⁸ the CMA announced its decision to refer the merger to an in-depth phase 2 merger investigation, subject to the offering of undertakings from the SSE Retail/Npower to address the CMA's competition concerns.

Future work, and proposed changes to regulation, to improve competition and innovation

97. The Chancellor of the Exchequer announced in the November 2017 Budget that the CMA would be provided with an extra £2.8 million a year, from April 2018, so that it “can take on more cases against companies that are acting unfairly”. This is in addition to, and separate from, funding that is likely to be required on the UK's exit from the EU in connection with the CMA taking on cases previously reserved to the European Commission's jurisdiction.
98. During the 2018/19 financial year,⁶⁹ the CMA intends to build on its progress in taking forward more enforcement cases, opening a minimum of ten new cases and doing so as efficiently and quickly as possible without compromising fairness and rigour.
99. The CMA will establish a new digital, data and technology team in 2018/19 to improve how the CMA captures, analyses and draws conclusions from large data sets, how it shares them with partners and parties in cases and how it stores them for future use. The team will also explore new analytical techniques to help develop the CMA's understanding of issues in the

⁶⁷ [Menzies Aviation / ASIG merger inquiry](#).

⁶⁸ After the end of the relevant reporting period, but before publication of this report.

⁶⁹ [CMA75, Competition and Markets Authority Annual Plan 2018/19; Presented to Parliament pursuant to paragraph 13\(2\) of Schedule 4 to the Enterprise and Regulatory Reform Act 2013](#), March 2018.

technology sector. The CMA has shared its plans for the team with the sector regulators and will continue to work with the regulators to share best practice for the use of data.

100. In 2018/19, the CMA also intends to build further on the progress it and the concurrent regulators have made, helping to ensure that competition law is applied effectively and consistently in markets for essential services. The CMA will continue to fulfil its leadership role in overseeing the operation of the concurrency regime and to work with the sector regulators to enhance each other's expertise. This is in addition to supporting other policy work designed to promote competition and broader thinking and advocacy on opportunities to make these markets work well for consumers.

C. Airport operation services and air traffic services – Civil Aviation Authority

101. The Civil Aviation Authority (CAA) is a public corporation responsible for regulating the UK's aviation sector. The CAA's core responsibilities are founded in primary legislation (principally the Civil Aviation Act 1982, the Transport Act 2000 and the Civil Aviation Act 2012, European Union (EU) legislation and in secondary legislation).
102. The CAA has competition and sectoral economic regulation powers for two particular aviation sectors:
- airport operation services (AOS) under the Civil Aviation Act 2012 (CAA12), which conferred concurrent competition powers from April 2013; and
 - air traffic services (ATS) under the Transport Act 2000 (TA00), which conferred concurrent competition powers from 2001.
103. The air transport and travel sectors were largely deregulated during the 1980s and 1990s through both national and EU legislation. The CAA does not have responsibility for the economic regulation of these sectors. Nonetheless, the CAA does have a role in issuing and enforcing airline licences and operating the Air Travel Organiser Licensing (ATOL) scheme.

Airline licensing

104. While the CAA does not have competition powers over airlines, the CAA licenses airlines under EU Regulation 1008/2008.⁷⁰ This requires airlines to have an operating licence from a national authority in their primary place of business which sets minimum standards in terms of insurance and financial resilience and also requires a valid air operator's certificate to ensure it meets minimum safety requirements, and that the majority of their shares are owned by EU nationals.

Air Travel Organiser Licensing

105. The CAA's ATOL scheme addresses the risk to consumers from insolvency in the air package holiday market. This risk arises because travel businesses take large sums of consumers' money in advance of delivering the service. In

⁷⁰ [Regulation \(EC\) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community \(Recast\).](#)

the absence of ATOL scheme membership, if a tour operator becomes insolvent, its customers may not have any or adequate protection from the associated financial losses and/or may be stranded abroad without assistance.

General developments since April 2017 from a competition or policy perspective

106. The key market developments from a competition or policy perspective since April 2017 are set out below.

Development of regulatory framework for the new runway and capacity expansion at Heathrow

107. In October 2016, the government announced⁷¹ its support for a new runway at Heathrow airport – the first full length runway in the south-east since the Second World War.
108. The CAA has consistently made the case that more aviation capacity is needed to increase competition and to prevent future consumers from experiencing higher airfares, reduced choice and lower service quality, and the CAA has confirmed its support for the Government announcement.
109. As Heathrow Airport Limited (HAL) continues to be subject to economic regulation, the CAA has a key role to play in incentivising cost efficiency and putting in place regulatory arrangements to support the efficient financing of the new runway. Following the CAA's consultation in January 2017⁷² on the key priorities and timetable for economic regulation of the new runway, the CAA confirmed these priorities in June 2017,⁷³ and consulted on the CAA's latest thinking on the development of core elements of the regulatory framework.
110. In December 2017,⁷⁴ the CAA published a further consultation confirming its approach in respect of key elements of the regulatory framework for HAL and discussing issues around the relationship between the regulatory framework and alternative delivery mechanisms, the cost of capital, financeability,

⁷¹ [Government Heathrow Airport announcement](#), October 2016.

⁷² [CAP1510](#) 'Economic regulation of the new runway at Heathrow Airport: consultation on CAA priorities and timetable'.

⁷³ [CAP1541](#) 'Consultation on core elements of the regulatory framework to support capacity expansion at Heathrow', June 2017.

⁷⁴ [CAP1610](#) 'Economic regulation of capacity expansion at Heathrow: policy update and consultation', December 2017.

financial resilience, the regulatory treatment of early construction costs and the further extension of existing price control (known as Q6).

111. In addition to the work considering the future regulation of the runway, the CAA has been asked by the Secretary of State for Transport (SoS) to provide advice on how well HAL has engaged with the airline community on the design of the capacity expansion scheme.⁷⁵ The CAA's final report is due in Spring 2018. The CAA has been closely observing HAL's engagement with the airline community and its plans for runway expansion and has prepared quarterly reports outlining HAL's progress on these important issues and emphasising the CAA's expectations⁷⁶ which will continue into 2018.

Regulation of Gatwick Airport Limited

112. The CAA introduced a new, lighter touch framework for its economic regulation of Gatwick Airport Limited (GAL) in 2014. One reason for adopting this new framework was to promote competition by facilitating innovation and diversity of offer, through encouraging bilateral contracts that could be better tailored to the needs of individual airlines and their passengers. Following the 2016 mid-term review,⁷⁷ the CAA continues to monitor GAL's performance, including by holding regular meetings with both GAL and its main airline customers to review recent developments and consider any problems arising.

Regulation of NATS (En Route) PLC

113. NATS (En Route) PLC (NERL) is the UK monopoly provider of en-route air traffic services and is subject to economic regulation under the TA00 and the EU's Single European Sky (SES) Performance Scheme for air navigation services.⁷⁸ The current reference period (RP2) ends in December 2019 and work is under way to prepare for RP3, which runs from January 2020 to December 2024. In preparation for RP3 the CAA has published a discussion document⁷⁹ on "Strategic outcomes for the economic regulation of NERL

⁷⁵ Department for Transport, [Terms of Reference for the CAA](#), November 2016.

⁷⁶ Quarterly Reports are available from [Heathrow price control review H7](#).

⁷⁷ [CAP 1502](#) 'A review of Gatwick Airport Limited's commitments framework: Findings and conclusions', December 2016.

⁷⁸ Commission Implementing Regulations [\(EU\) No 390/2013](#) of 3 May 2013 laying down a performance scheme for air navigation services and network functions and [\(EU\) No 391/2013](#) of 3 May 2013 laying down a common charging scheme for air navigation services.

⁷⁹ [CAP1511](#) 'Strategic outcomes for the economic regulation of NERL 2020-2024: discussion document', April 2017.

2020-2024” as well as draft,⁸⁰ then final,⁸¹ “Guidance for NERL in preparing its business plan for Reference Period 3”.

114. One of the issues to be addressed in RP3 is the emergence of new and potentially disruptive technologies (for example, drones). The introduction of new technologies may allow for the development of, and significant changes to, ways of operating. This may include greater automation, or systemisation, or raise questions as to the scope of NERL’s future business activities that should be considered as part of the airspace user funded monopoly activities under the price control. There may be opportunities to benefit from the creation of new markets in the provision of air traffic and airspace management that lead to positive outcomes for consumers.

Review of market conditions for terminal air navigation services

115. Under the EU SES legislation, air navigation services are subject to a Performance Scheme covering cost efficiency, capacity, safety and environment. EU Regulation No 391/2013 (‘the Charging Regulation’),⁸² lays down a common charging scheme for air navigation services, and allows for exemptions to be made from some aspects of the Performance Scheme, including the requirement to set cost efficiency targets for terminal air navigation services (TANS), where ‘market conditions’ exist. The criteria for this assessment are set out in Annex I of the Charging Regulation, and these include, among other things, an assessment of the extent to which: service providers can freely offer to provide or withdraw the provision of TANS; there is free choice in respect to service provider, and airports are subject to commercial cost pressures or incentive based-regulation.⁸³

⁸⁰ [CAP1593](#) ‘Guidance for NERL in preparing its Business Plan for Reference Period 3: Consultation document’, September 2017.

⁸¹ [CAP1625](#) ‘Guidance for NERL in preparing its business plan for Reference Period 3’, January 2018.

⁸² Annex I of [EU Regulation No 391/2013](#), May 2013.

⁸³ The CAA does not consider that the market conditions criteria constitute a test of whether the market for TANS is fully competitive, whether any individual operator holds a position of significant market power or whether there are any other features of the market that may have an appreciable effect on competition that might be considered separately by the CAA under its competition powers.

116. The CAA has previously carried out two assessments,⁸⁴ at the request of the SoS, as to whether the provision of TANS at UK airports.⁸⁵ is subject to market conditions.
117. The SoS requested the CAA carry out another assessment in October 2017 under Section 16 of the Civil Aviation Act 1982 for the third Reference Period (RP3 – 2020 to 2024).⁸⁶ The CAA issued a Call for Evidence in November 2017⁸⁷ and in February 2018 published for consultation its draft advice that the provision of TANS continues to be subject to market conditions.⁸⁸
118. The CAA expects to publish its final advice to the SoS on whether the TANS is subject to market conditions for RP3 in the second quarter of 2018. Following this, it expects that the UK government will inform the European Commission on the conclusions of its assessment for RP3 in 2018.

Guidance on considerations when tendering for and changing TANS provider

119. In January 2017, the CAA published reports by Steer Davies Gleave⁸⁹ on the process for the transitions in TANS providers at Birmingham and Gatwick airports. Key findings from the reports were:
- the transitions were broadly successful, with no issues in terms of continuity or quality of service
 - there were challenges between the incoming and outgoing providers through the provisions, particularly in relation to the transfer of staff and, to a lesser extent, the transfer of information and data
 - there has been further activity in the market with Edinburgh and Belfast City airports choosing new providers

⁸⁴ [CAP1004](#) 'SES Market Conditions for Terminal Air Navigation Services in the UK', February 2013 and [CAP1293](#) 'Review of advice on SES Market Conditions for Terminal Air Navigation Services in the UK, May 2015.

⁸⁵ The assessment considered UK airports with over 70,000 instrument flight rules air traffic movements. Currently Heathrow, Gatwick, Manchester, Stansted, Edinburgh, Birmingham, Luton, Glasgow and London City airports meet this movement threshold.

⁸⁶ [Department for Transport letter to CAA](#), October 2017.

⁸⁷ [CAP1605](#) 'Terminal Air Navigation Services (TANS) contestability in the UK: Call for evidence', November 2017.

⁸⁸ [CAP1634](#) 'Consultation on Draft Advice on Market Conditions for TANS in the UK', February 2018.

⁸⁹ [Steer Davies Gleave report](#) on the process for the transition in terminal air navigation service provider at Birmingham and Gatwick airports, January 2017.

120. In 2018, the CAA published advice⁹⁰ to stakeholders on the transitions of TANS provision at airports, including when airport operators tender for the provision of TANS at their airports and choose a new provider. This is designed to improve the process for effective transition to new TANS providers at UK airports.

Thessaloniki Forum of Airport Charges Regulators

121. The Airport Charges Regulations (ACRs)⁹¹ implement EU Directive 2009/12/EC⁹² (ACD) on airport charges into UK law. They establish a common framework for airport operators when levying airport charges at UK airports (serving more than five million passengers in a year). The CAA can investigate complaints that an airport operator has not complied with the ACRs.
122. In February 2017, the Thessaloniki Forum of Airport Charges Regulators of the Independent Supervisory Authorities (ISAs) established a working group on market power assessments to provide advice to support the European Commission in developing its understanding on how market power assessments are currently being used in aviation and other sectors. In November 2017, the Forum adopted two reports from the Working Group.⁹³
123. In February 2018, the Forum established another working group to prepare papers on other aspects of the operation of the ACD and to provide recommendations on, among other topics:
- the use of criteria to identify airports that are most likely to have significant market power
 - how to assess whether incentives and discounts applied at airports discriminate among airport users
 - the potential regulatory remedies to address any risk of abuse/misuse of significant market power by airport operators

⁹⁰ [CAP1633](#) 'Transitions of Terminal Air Navigation Services (TANS) Provision – Further Information for Stakeholders', February 2018.

⁹¹ [Airport Charges Regulations](#).

⁹² [Directive 2009/12/EC](#) of the European Parliament and of the Council of 11 March 2009 on airport charges.

⁹³ [Reports on Market Power Assessments](#) prepared by the Thessaloniki Forum.

European Commission's Evaluation of the Airport Charges Directive

124. The European Commission's Aviation Strategy⁹⁴ provided for an evaluation of the ACD.⁹⁵ A 'Support study to the ex-post evaluation of Directive 2009/12/EC on Airport Charges' by Steer Davies Gleave was published in December 2017.⁹⁶ Evidence gathered indicates that the ACD has not fully achieved its objectives and that the ACD objectives do not address all the issues in view of market and regulatory developments.
125. The European Commission launched an Inception Impact Assessment (IIA)⁹⁷ in November 2017. The IIA identified two issues: the risk that airports with significant market power misuse their market power; and the risk that in certain cases (eg where an airline has significant buyer power at an airport) the airport charges setting process may impose additional barriers to entry for airlines wishing to launch new services at an airport, for example, by hampering investment in airport capacity. The preliminary options identified to address these issues are:
- Option 1: the **baseline scenario** is "no change in EU action" (ie reliance on the existing ACD and general competition rules)
 - Option 2: **adopt Interpretative Guidelines** to clarify existing requirements relating to consultation and transparency and to clarify the role, powers, resources and independence of ISAs
 - Option 3: **replace the ACD with new legislation** clarifying the requirements relating to consultation and transparency and strengthen the powers, resources and independence of the ISAs. In addition, require ISAs to apply screening criteria to identify those airports most likely to have significant market power
 - Option 4: as in **Option 3, but, require ISAs, for all airports** it identifies as being likely to have significant market power on the basis of applying

⁹⁴ Communication from the European Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, An Aviation Strategy for Europe, [COM\(2015\) 598 final](#), and European Commission Staff Working Document Accompanying the document Communication from the European Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, An Aviation Strategy for Europe [SWD\(2015\) 261 final](#).

⁹⁵ [Directive 2009/12/EC](#) of the European Parliament and of the Council of 11 March 2009 on airport charges.

⁹⁶ [Support study to the ex-post evaluation of Directive 2009/12/EC on Airport Charges, Final report – Study](#), December 2017.

⁹⁷ [Inception Impact Assessment for Charges for the use of airport infrastructure](#), November 2017.

screening criteria, to approve or determine the maximum level of airport charges, based on the single till approach⁹⁸

126. The CAA submitted comments⁹⁹ on the IIA in December 2017.
127. The European Commission plans to launch an external study in April 2018 to support the impact assessment considering options to reform the ACD. In September 2018, the European Commission expects to publish a staff working document with its conclusions on how well the ACD is working.

Improving lead generation

128. The CAA has communicated internally about competition law and externally through presentations to trade associations to improve lead generation. The internal communication was focused on ensuring colleagues understand how to identify a potential competition issue and know how to handle competition enquiries, including referring any leniency enquires directly to the CMA.

Changes to the legal/regulatory framework since April 2017, including any new regulations put in place during the year, which might significantly affect competition and innovation

Amendments to licence for ATS

129. In February 2018, the CAA published its proposal to modify Condition 2 of the NERL air transport licence¹⁰⁰ to require NERL to submit a resilience plan to the CAA. The plan will set out the principles, policies and processes NERL will follow to ensure that it will develop and maintain its assets, personnel and systems to provide a resilient service. This will not significantly affect competition but should incentivise innovation by NERL to plan better to minimise the occurrence of disruptive events and to mitigate their impacts when they do occur.

⁹⁸ Under the single till principle, costs and revenues deriving from all airport activities (including aeronautical and commercial) are taken into consideration when determining the level of airport charges.

⁹⁹ [CAA Comments](#) on Inception impact assessment Revision of Directive 2009/12/EC of the European Parliament and of the Council of 11 March 2009 on airport charges.

¹⁰⁰ [CAP 1639](#) 'Proposal to modify Condition 2 of NATS (En Route) plc licence in respect of resilience planning, policy statement on enforcement and consultation on draft guidance', February 2018.

Bringing the European Package Travel Directive into UK Law

130. The package travel sector has undergone significant change since the 1992 package travel regulations.¹⁰¹ The 2015 European Package Travel Directive (PTD)¹⁰² is a maximum harmonisation directive which aims to update and extend consumer protection across EU Member States for package travel. The PTD includes travel by rail and other packages which do not include a flight. BEIS is leading the implementation and transposition of the PTD, other than for insolvency protection provisions that apply to air packages, which are led by the Department for Transport (DfT).
131. In the UK, PTD requirements are implemented by the UK Package Travel Regulations (PTR)¹⁰³ save for the requirements for insolvency protection for air packages which are implemented by the ATOL Regulations.¹⁰⁴
132. The changes introduced include requiring Member States to have effective and sufficient protection in order to create a more level playing field and allow travel businesses to sell cross-border. The PTD facilitates greater competition as travel businesses are required only to comply with the protection scheme in one Member State in which they are established in order to sell across the EU (ie reducing compliance costs).¹⁰⁵
133. The PTD should increase consumers' confidence in purchasing decisions, potentially improving demand for package travel services.
134. The DfT consulted in February 2018 on implementation of the PTD insolvency protection for air packages into the UK.¹⁰⁶ The CAA will continue to work closely with the DfT and industry to meet the deadline of 1 July 2018 for the changes to take effect, with a view to ensure that any changes do not burden the industry more than necessary and do not unduly impair competition.

¹⁰¹ [The Package Travel, Package Holidays and Package Tours Regulations 1992](#).

¹⁰² [European Package Travel Directive \(2015/2302/EU\)](#), November 2015.

¹⁰³ [The Package Travel, Package Holidays and Package Tours Regulations 1992](#)

¹⁰⁴ [The Civil Aviation \(Air Travel Organisers' Licensing\) Regulations 2012](#)

¹⁰⁵ Non-EU travel businesses, which are not established in the EU, will continue to need to comply with the regulatory regime of each individual jurisdiction in which they sell.

¹⁰⁶ Department for Transport, [Updating consumer protection in the package travel sector Consultation on ATOL - Moving Britain Ahead](#), February 2018.

Cases under the competition prohibitions since April 2017

135. The CAA did not open any cases under competition law and closed one case during the year to March 2018.

Access to car parking facilities at East Midlands International Airport

136. The CAA opened an investigation into an alleged breach of both the Chapter I and II prohibitions of the Competition Act 1998 at an airport in the UK in relation to AOS in March 2015. The CAA published its decision notice in the Chapter I case in December 2016 confirming that East Midlands International Airport, its parent company, the Manchester Airports Group Plc (EMIA) and Prestige Parking Ltd had infringed Chapter I of the Competition Act 1998.¹⁰⁷

137. In June 2017, the CAA decided to close the Chapter II investigation concerning the alleged abuse of a dominant position by EMIA in relation to access to facilities for the provision of car parking services at EMIA, on administrative priority grounds.¹⁰⁸ In reaching that decision, the CAA had regard to a number of factors including that:

- it had already investigated the specific facts of this case, which resulted in a decision in December 2016 that both EMIA and Prestige Parking Limited had infringed Chapter I of the Competition Act 1998; and
- it had undertaken a sector review of surface access to UK airports which led to a report on the operation of the sector¹⁰⁹ in December 2016 and an advisory letter¹¹⁰ being sent to relevant UK stakeholders. The advisory letter encouraged stakeholders to review their practices to ensure they are compliant with competition law now and in the future.

Investigation of suspected breaches of competition law in relation to facilities at airports

138. The CMA launched an investigation into suspected breaches of competition law in relation to facilities at airports in December 2017 under Chapter I of the

¹⁰⁷ [CAA press notice](#) on 'CAA competition investigation: East Midlands International Airport and Prestige Parking Limited admit to price fixing', December 2016.

[CAP1507](#) 'Access to car parking facilities at East Midlands International Airport – CAA decision CA98-001 (non-confidential)' January 2017.

¹⁰⁸ [CAA decision to close the Chapter II investigation on administrative priority grounds](#).

¹⁰⁹ [CAP1473](#) 'Review of market conditions for surface access at UK airports – Final report' December 2016.

¹¹⁰ [CAP1473b](#) 'Advisory Letter on the provision of surface access at UK airports', December 2016.

Competition Act 1998.¹¹¹ The CAA assisted the CMA's assessment which led to the investigation and agreed that it was appropriate for the CMA to be the investigating authority with support from the CAA on knowledge of the aviation industry and with the secondment of a policy person to the case team.

Market studies undertaken since April 2017

139. The CAA did not open or complete any market studies under the Enterprise Act 2002 during the year to March 2018 and no market studies are ongoing.

Decisions taken since April 2017 to use CAA's direct regulatory powers instead of competition prohibition powers

140. Under Schedule 4 of Enterprise and Regulatory Reform Act 2013, the CMA reports on any decision taken by a regulator, in which the regulator is satisfied that its functions under Part 1 of the Competition Act 1998 in a case are exercisable, 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 2017, there have been no occasions when the CAA has been satisfied that its functions under Part 1 of Competition Act 1998 are exercisable but has nevertheless decided that it is more appropriate for it to proceed by exercising functions other than its Part 1 functions.
141. The CAA has a duty to consider, before exercising its powers under certain sector-specific legislation,¹¹² whether it would be more appropriate to proceed under competition powers. Since April 2017, the CAA has exercised its sectoral powers under the TA00 to investigate an alleged licence breach by NERL following a complaint alleging that NERL had breached a number of conditions of its licence and Section 8 of the TA00. The allegations were that NERL had failed to take all reasonable steps to meet demands and that discrimination in the provision of its services was distorting competition.
142. The CAA found that that NERL had not failed in meeting its duties under the conditions of its Licence and TA00 and therefore it was not necessary to consider whether to proceed under the CAA's competition powers. Nevertheless, the investigation highlighted a number of areas of future

¹¹¹ [CMA investigation into suspected breaches of competition law in relation to facilities at airports under Chapter I of the Competition Act 1998](#), December 2017.

¹¹² Before exercising certain enforcement powers related to licensed airport operators under the Civil Aviation Act 2012 and before exercising certain enforcement powers related to licensed air traffic service providers under the Transport Act 2000.

improvement for NERL. The CAA set out that NERL must deliver on a series of remedial actions in order to improve resilience levels in its operation.¹¹³

Future work, and proposed changes to regulation, to improve competition and innovation

143. In addition to the work noted in ‘General developments since April 2017 from a competition or policy perspective’, other future work and proposed changes to regulation, to improve competition and innovation are outlined below.

Compliance with Airport Groundhandling Regulations

144. The Airport Groundhandling Regulations (AGRs)¹¹⁴ are based on the ‘Directive on access to the groundhandling market at Community airports’.¹¹⁵ The purpose of these was to open up access to the groundhandling market which should help reduce the operating costs of the airline companies and improve the quality of service provided to airport users.
145. In 2018, the CAA plans to write to all airport operators and groundhandling operators to remind them of their requirements under the AGRs and request confirmation from them that they are in compliance with the AGRs.

¹¹³ [CAP1578](#) ‘Investigation under section 34 of the Transport Act 2000: Project Oberon, Final Report’, August 2017.

¹¹⁴ [Consolidated version of the AGRs](#) (prepared by the CAA for information and not to be relied on for any legal purposes).

¹¹⁵ [Council Directive 97/97/EC](#) of 15 October 1996 on access to the groundhandling market at Community airports.

D. Communications (broadcasting, electronic communications and postal services) – Office of Communications

146. The Office of Communications (Ofcom) is the independent national regulatory authority for the UK communications industries, with responsibilities across broadcasting (television and radio), telecommunications, spectrum and postal services.
147. Ofcom has powers to enforce the competition prohibitions in the Competition Act 1998 in relation to activities connected with communications matters (including broadcasting, telecommunications and postal services) and to make market investigation references, under the Enterprise Act 2002, to the CMA in relation to commercial activities connected with communications matters (including broadcasting, telecommunications and postal services).
148. Ofcom's principal duty, set out in the Communications Act 2003, is to further the interests of citizens in relation to communications matters and to further the interests of consumers in relevant markets, where appropriate by promoting competition.
149. In relation to postal services, Ofcom's duty is to carry out its functions in a way that it considers will secure the provision of a universal postal service. In performing this duty, Ofcom must have regard to the need for the provision of a universal postal service to be financially sustainable and to be efficient before the end of a reasonable period and for its provision to continue to be efficient at all subsequent times. Where it appears to Ofcom that, in relation to the carrying out of any of its functions in relation to postal services, any of the general duties (including the principal duties set out above) conflict with its duty under section 29 of the Postal Services Act 2011 to secure the provision of a universal postal service, Ofcom must give priority to that latter duty.

General developments since April 2017 from a competition or policy perspective

150. Given Ofcom's principal duty, promoting competition is at the heart of everything Ofcom does.

Promoting competition in fixed-line services by creating a more independent Openreach

151. In March 2017, BT notified Ofcom of voluntary commitments (the Commitments) to strengthen Openreach's strategic and operational independence from BT. The Commitments followed Ofcom's consultation in July 2016 setting out its competition concerns relating to the continuing

incentive and ability of BT to discriminate against its downstream customers due to its vertically integrated structure and position of significant market power. These concerns arose because BT runs the national network, Openreach, as well as its own retail business.

152. The Commitments will make Openreach a distinct company with its own staff, management, purpose and strategy. Ofcom published a statement in July 2017 confirming its decision to release BT from its existing undertakings once the Commitments come into effect.
153. Ofcom has established a dedicated Openreach Monitoring Unit to monitor BT's implementation of, and compliance with, the Commitments and feed into wider Ofcom work to assess whether the new arrangements are contributing to better outcomes, both for businesses and consumers, such as increased network investment and higher service quality.

Enabling investment in fixed-line and mobile communications services

154. Communications markets are fast-moving, with changing consumer and business needs and ongoing innovation in networks, devices and services. With connectivity being increasingly important to UK consumers and businesses, communications providers must respond to the demands of the customers by investing in network to improve speed, availability and reliability.
155. Over the past 12 months, Ofcom has sought to promote competition by creating the right conditions for companies to invest in superfast services and ultrafast full-fibre networks. Ofcom plans to make it quicker and easier for rival providers to build their own fibre networks direct to homes and offices using BT's existing telegraph poles and ducts (which are the small underground tunnels that carry telecoms cables). Ofcom has set a cap on rental charges, resulting in significant reductions compared to prior rental charges. Coupled with the fact that more autonomy is to be given to BT's rivals, to enable them to undertake work themselves, Ofcom considers that BT's competitors will be in a better position to innovate as technology evolves and respond to changes in their customer's needs.
156. In July 2017, Ofcom published the statement 'Award of the 2.3 and 3.4 GHz spectrum bands: Competition issues and Auction Regulations'.¹¹⁶ The statement sets out Ofcom's final policy decisions for the 2.3 and 3.4 GHz award, including restrictions on the overall amount of spectrum that any one operator can hold as a result of the auction. Ofcom's decisions were taken in

¹¹⁶ Ofcom, [Award of the 2.3 and 3.4 GHz spectrum bands: Competition issues and Auction Regulations](#), July 2017.

light of market developments and to safeguard competition over the coming years. Aspects of Ofcom's decisions were the subject of judicial review proceedings in the High Court brought by British Telecommunications Ltd (BT) and EE Ltd (EE) and H3G UK Limited (H3G). In December 2017 the High Court dismissed the claims of BT, EE and H3G and upheld Ofcom's decisions as set out in the 11 July 2017 statement. H3G sought permission to appeal the High Court's judgment in the Court of Appeal. Permission was unanimously refused in a rolled-up hearing that took place in February 2018.

157. In order to be in a position to move as quickly as possible to hold the auction once the judgment of the Court of Appeal was given, Ofcom made the Auction Regulations on 24 January 2018. Following the Court of Appeal's decision not to grant permission, Ofcom proceeded with the auction process and on 5 April 2018¹¹⁷ announced the outcome of the principal stage of its auction.

Regulating the BBC

158. In April 2017, Ofcom became the first independent, external regulator of the BBC. In carrying out its functions in relation to the BBC, Ofcom must among other duties have regard to protecting fair and effective competition in the UK.
159. The BBC Charter and Agreement place specific responsibilities on Ofcom relating to different types of BBC activity that could generate competition concerns.
160. Specific examples of the tools and guidance developed by Ofcom to protect fair and effective competition where competition concerns arise are:
- (a) **Competition Assessments:** Before the BBC is able to make a material change to its public services, ie a new service or a change to an existing service which may have a significant adverse impact on fair and effective competition, it must first be assessed by Ofcom.¹¹⁸
 - (b) **Competition Reviews:** developing market conditions, or incremental changes introduced by the BBC over time, could mean that an existing service or activity had an adverse impact on fair and effective competition.

¹¹⁷ The outcome was announced after the end of the reporting period for this Report but before publication of it.

¹¹⁸ Ofcom, [Assessing the impact of proposed changes to the BBC's public service activities, Ofcom's procedures and guidance](#), March 2017.

Competition Reviews allow Ofcom to look at these changes and, where competition concerns are identified, require the BBC to take action.¹¹⁹

(c) **Commercial and trading activities:** Ofcom has set rules to ensure that the BBC's commercial and trading activities are carried out in accordance with normal market principles and do not gain an unfair advantage from their relationship with the public service.¹²⁰

(d) **Distribution of BBC public services:** Ofcom has introduced requirements to protect fair and effective competition in relation to how the BBC distributes its public services to third parties.¹²¹

161. In November 2017, Ofcom began an initial assessment of the BBC's proposals to launch a new television channel for Scottish audiences. Following this initial assessment, in January 2018 Ofcom announced that the BBC's proposals amount to a material change of the BBC's public services, which warrants a competition assessment. This assessment will consider whether the public value offered by a new BBC channel would justify any potential adverse effects on fair and effective competition.¹²² Ofcom will publish a consultation setting out its provisional view on which it will be inviting stakeholders to comment. Ofcom expects to publish its final decision in July 2018.

Changes to the legal/regulatory framework since April 2017, including any new regulations put in place during the year, which might significantly affect competition and innovation

Market reviews

162. As part of its statutory functions, Ofcom is required to review markets to assess whether they are effectively competitive and, where Ofcom finds that a provider has significant market power (SMP), to impose appropriate remedies.

163. Over the past 12 months Ofcom has completed the following market reviews:

- Business Connectivity¹²³

¹¹⁹ Ofcom, [Assessing the impact of the BBC's public service activities, Ofcom's procedures and guidance](#), March 2017.

¹²⁰ Ofcom, [The BBC's commercial and trading activities, Requirements and guidance](#), July 2017.

¹²¹ Ofcom, [Distribution of BBC public services, Ofcom's requirements and guidance](#), March 2017.

¹²² Ofcom, [Ofcom review of proposed BBC Scotland television channel](#).

¹²³ [Business Connectivity market review](#).

- [Mobile Termination Rates](#)¹²⁴
- [Narrowband](#)¹²⁵
- [Wholesale Local Access](#)¹²⁶
- [Wholesale Broadband Access](#)¹²⁷

Business Connectivity market review

164. In April 2016, Ofcom completed its Business Connectivity market review, which examined the markets for the provision of leased lines to businesses in the UK. As a result of an appeal brought by BT against certain aspects of the market definitions in the 2016 review, Ofcom is required to reconsider a number of issues in relation to its product market definition, geographic market definition and the boundary of the competitive core network.
165. In order to safeguard competition and protect the interests of consumers in the intervening period, in November 2017, Ofcom used its powers under the Communications Act 2003 to impose temporary regulation for the services and areas where Ofcom continues to find that BT has significant market power. The temporary regulation will be in place for the period until March 2019. In the meantime, Ofcom’s work on the new analysis remains ongoing.

Mobile Termination Rates market review

166. In March 2018, Ofcom published its final statement in the Mobile call termination market review 2018. Mobile call termination is a wholesale service provided by a mobile provider to connect a call to a customer (ie call recipient) on its network. When fixed or mobile providers enable their customers to call a UK mobile number, the originating communications provider pays the mobile provider which terminates the call to the call recipient, a wholesale charge, namely a ‘mobile termination rate’ (MTR). MTRs are set on a per-minute basis and are currently subject to regulation because the mobile call termination providers have SMP. The statement set out the maximum price per-minute that mobile providers may charge for call termination.

Narrowband market review

¹²⁴ [Mobile call termination market review.](#)

¹²⁵ [Narrowband market review.](#)

¹²⁶ [Wholesale local access market review.](#)

¹²⁷ [Wholesale broadband access market review.](#)

167. In November 2017, Ofcom published its conclusions in the Narrowband market review 2017. This review looks at the effectiveness of competition and what regulation, if any, is appropriate to ensure effective competition and further the interests of residential and business consumers.
168. In light of that review, Ofcom decided to regulate BT and (in the Hull Area) KCOM in three wholesale access markets: wholesale analogue fixed telephone lines (the standard lines used by residential and business consumers) and two markets that enable the delivery of digital telephone services to businesses. Ofcom will also continue to regulate BT and KCOM's wholesale provision of calls over those lines.
169. Ofcom also decided to regulate wholesale fixed call termination, an arrangement where one telecoms provider charges another provider for terminating calls on its network. This regulation applies to all providers of calls to UK geographic numbers (numbers starting 01 and 02).

Wholesale Local Access market review

170. In March 2018 Ofcom published its final statement in its wholesale local access market review. Wholesale Local Access refers to the connections from the local telephone exchange to a home or business premises, which are used to provide broadband and other services at the retail level.
171. Ofcom's main aims were to encourage investment in full-fibre networks and promote competition. Under Ofcom's measures, BT must make its telegraph poles and underground tunnels open to rival providers, making it quicker and easier for them to build their own full-fibre networks. Moving customers to full-fibre broadband will be a gradual process. In addition, Ofcom is cutting the wholesale price that BT can charge telecoms providers for its popular superfast broadband service, which has a download speed of up to 40 Mbit/s. Ofcom is also setting tougher quality of service standards for broadband and phone customers, with strict rules on Openreach repairs and installations.
172. Ofcom's statement sets out its analysis of the wholesale local access market and its decision that BT has SMP in this market. Additionally, it sets out the remedies that Ofcom is imposing on BT with effect from 1 April 2018, in particular, the detail of the charge controls Ofcom has imposed.

Wholesale Broadband Access market review

173. In June 2017, Ofcom published its consultation on the wholesale broadband access (WBA) market. The WBA market is positioned between retail broadband services, ie the market for services that consumers buy, and the

Wholesale Local Access market, which relates to the physical connections to consumers' premises.

174. Historically BT's WBA products have played an important role in enabling telecoms providers to offer broadband services without having to invest in their own equipment. However, the use of WBA products by telecoms providers other than BT has steadily fallen over the last decade. The larger telecoms providers have unbundled BT's exchanges (using local loop unbundling (LLU)) and invested in their own equipment.
175. Ofcom has consistently deregulated the WBA market in those parts of the UK where the presence of multiple operators using LLU and Virgin Media's cable network has meant that consumers have a choice of several broadband providers. Whilst retail competition in areas of the UK (which Ofcom refers to as Market A), is limited, it does not expect that putting in place wholesale remedies to promote entry or expansion in this market would be likely to significantly increase retail competition. In its consultation, Ofcom proposed that BT has SMP in the provision of WBA services in Market A (which has declined significantly from the approximately 10% of UK premises that comprised Market A at the time of the last WBA review) and proposed 'light touch' remedies. Ofcom found that no operator has SMP in the provision of WBA services in Market B.
176. Ofcom intends to notify the European Commission of its decisions in June 2018 and to publish its final statement in July 2018.

Cases under the competition prohibitions since April 2017

Complaint from Whistl UK Limited in relation to the prices, terms and conditions on which Royal Mail plc offered to provide access to certain letter delivery services

177. In February 2014, Ofcom opened an investigation into a complaint from Whistl in relation to prices, terms and conditions offered by Royal Mail for access to certain letter delivery services (known as 'D+2 Access'). This followed announcements from Royal Mail in January 2014 of changes to these prices, terms and conditions.
178. In April 2014, Ofcom announced that its investigation would be conducted under the Competition Act 1998 and would consider whether Royal Mail had abused a dominant position under Article 102 of the Treaty on the Functioning of the EU and Chapter II of the Competition Act 1998.
179. In July 2015, Ofcom announced that it had issued a Statement of Objections to Royal Mail which set out the provisional view that it had abused a dominant

position by engaging in conduct that amounted to unlawful discrimination against postal operators competing with Royal Mail in delivery.

180. Royal Mail has provided written and oral representations on the matters and evidence set out in the Statement of Objections. Ofcom is carefully considering Royal Mail's representations and has gathered additional evidence and carried out further analysis. Ofcom expects to make a decision in this case before summer 2018.

Market Studies undertaken since April 2017

181. Ofcom has not undertaken any market studies under the Enterprise Act 2002 during the reporting period. Market reviews are carried out under Ofcom's sector-specific regulatory powers and are detailed above.

Decisions taken since April 2017 to use Ofcom's direct regulatory powers instead of competition prohibition powers

182. Under Schedule 4 of Enterprise and Regulatory Reform Act 2013, the CMA is required to report on any decision taken by a sector regulator, in respect of a case in relation to which the regulator is satisfied that its functions under Part 1 of Competition Act 1998 are exercisable, that it is more appropriate for it to proceed by exercising functions other than those that it has under Part 1 of Competition Act 1998. Since April 2017, there have been no occasions on which Ofcom has been satisfied that its functions under Part 1 of the Competition Act 1998 are exercisable but has decided nevertheless that it is more appropriate for it to proceed by exercising functions other than its Part 1 functions.
183. Ofcom also has a duty to consider, before exercising its powers under the Communications Act 2003, whether it would be more appropriate to proceed under competition powers. Since April 2017, there have been no cases in which competition concerns arose such that Ofcom needed to consider the matter further prior to exercising its powers under the Communications Act 2003 but considered that it was appropriate to proceed under its regulatory powers in the context of the particular case.

Future work, and proposed changes to regulation, to improve competition and innovation

184. Ofcom's aim is to ensure consumers and businesses benefit from a range of communications products and services, with the market providing good outcomes in terms of choice, price, quality, investment and innovation.

185. Ofcom does this by ensuring that markets can work effectively, through regulation where appropriate, so that consumers can gain from the benefits of competition. In 2018/19, to achieve Ofcom's goal of promoting competition and ensuring markets work effectively for consumers, Ofcom will:
- (a) **Support investment in network infrastructure.** Ofcom will implement regulation following the Wholesale Local Access market review and continue to work with all industry players as necessary to support investment in advanced, competing network infrastructure, including co-investment.
 - (b) **Promote effective Openreach reform.** Ofcom will actively monitor and report progress on arrangements for the legal separation of Openreach from BT. Additionally, Ofcom will assess the effectiveness of actions taken in benefiting consumers, including addressing our competition concerns and encouraging new investment in networks.
 - (c) **Help consumers, including SME businesses, engage with communications providers** by identifying and addressing barriers to competition and exercising choice.
186. Ofcom has engaged with the government and the CMA to ensure that the regulatory and competition regimes in the sectors for which it has responsibility continue to operate effectively after EU exit. As the negotiations for EU exit progress and it becomes clearer as to the terms on which the UK will leave the EU, Ofcom will continue these discussions to ensure that competition is able to flourish and that consumers remain protected from anti-competitive activities.

E. Electricity and gas in Great Britain – Gas and Electricity Markets Authority

187. The Gas and Electricity Markets Authority (Ofgem) is the regulator for the gas and electricity markets in Great Britain and is the designated national regulatory authority for Great Britain under the EU's Third Energy Package. Ofgem is also a national competition authority with concurrent powers with the CMA to enforce competition law in respect of specified activities in energy markets under the Competition Act 1998 and the Enterprise Act 2002.

General developments since April 2017 from a competition or policy perspective

Ofgem-CMA cooperation

188. Ofgem has been working with the CMA on several projects which have implications for competition in the energy sector, such as the heat networks market study (see paragraphs 76 to 78), the CMA's recommendations in respect of digital comparison tools (see paragraphs 9 to 15) and the SSE Retail/Npower merger (see paragraph 96).

Regulatory appeals

189. The CMA has also recently concluded the appeal by SSE Generation Limited and EDF Energy (Thermal Generation) Limited against a decision by Ofgem to reject an industry proposal to modify an industry code, the Connection and Use of System Code (CUSC) Modification Proposal (CMP) 261. The CMA upheld Ofgem's original decision.

Retail

190. As of June 2017, there were 60 suppliers offering electricity and/or gas, 16 more than a year earlier. New suppliers have intensified competition, reducing the six largest energy suppliers' share of the market from close to 100% to just over 80%. Switching and engagement are increasing, with annual household switching rates reaching almost 17% in June 2017, the highest since August 2011.
191. Ofgem has been progressing work on the remedies associated with the CMA's energy market investigation, as discussed in paragraphs 220 to 223 and 241.
192. Ofgem has been moving towards a greater reliance on general principles in regulating energy suppliers, as described in paragraphs 204 to 206. Ofgem

also undertook work to extend the current price protections for consumers (see paragraphs 207-212).

Smart meter rollout

193. The smart meter rollout in Great Britain is underway and aims to have around 53 million smart gas and electricity meters fitted in over 30 million premises (households and businesses) by the end of 2020.
194. More than 8.61 million smart and advanced meters have been installed by large and small energy suppliers in homes and businesses in Great Britain. Of these, 7.59 million have been installed at domestic premises by large energy suppliers.
195. Ofgem provides regulatory oversight for the rollout and is working with the BEIS to ensure the rollout results in the best possible outcomes for consumers. In particular, Ofgem's role is to:
 - protect the interests of consumers
 - monitor energy suppliers' compliance with their smart metering licence obligations
 - regulate the Data Communications Company, including through a price control

Onshore electricity transmission

196. Ofgem is continuing with work to introduce competition for the financing, construction and operation of high value (>£100m) new and separable assets in the onshore transmission network.¹²⁸ While delays to enabling legislation have put the introduction of the Competitively Appointed Transmission Owner (CATO) regime¹²⁹ on hold, Ofgem has consulted on applying other models to introduce the benefits of competition, discussed in paragraphs 214 to 219.

Interconnectors

197. Electricity interconnectors, which connect the Great Britain electricity transmission network to other countries' networks, provide significant benefits

¹²⁸ Ofgem, [Competition in onshore transmission](#).

¹²⁹ Under the CATO regime Ofgem would run a competition to determine the licensee to design, build, finance and operate the relevant onshore transmission assets. The competition would determine the capital, operational and financing costs of delivering and operating the transmission assets.

to Great Britain's energy consumers and are an important part of the future energy system. Ofgem confirmed its cap and floor¹³⁰ regime for interconnection investment in 2014. Six projects have received initial approval under this regime to date and are now at varying stages of development and construction. In January 2018, Ofgem published positive decisions to grant a further three projects a cap and floor in principle.¹³¹

Offshore transmission owners

198. Ofgem manages the competitive tender process through which offshore transmission licences are granted to Offshore Transmission Owners (OFTOs). To date, Ofgem has run, or is in the process of running, tenders for 21 OFTO projects and continues to have a strong pipeline of future projects. This tender process has brought considerable new investment capital into the offshore transmission sector and has seen offshore wind generators partner with the most efficient and competitive players in the market. This has contributed to lower costs and higher standards of service for such generators and, ultimately, consumers.

Networks

199. Ofgem's RIIO (Revenue = Incentives + Innovation + Outputs) framework sets price controls for network companies, and is designed to encourage them to a) innovate to reduce network costs; b) put stakeholders at the heart of their decision making; c) invest efficiently to ensure continued safe and reliable services; and d) play a role in delivering a low carbon economy and wider environmental objectives. The current price controls for gas and electricity transmission (RIIO-T1) and gas distribution (RIIO-GD1) networks will end on 31 March 2021, with the electricity distribution price control (RIIO-ED1) ending on 31 March 2023.
200. In July 2017, Ofgem published an open letter initiating the RIIO-2 process and this was followed by the publication of proposals for the new regulatory framework in March 2018. This work will continue throughout 2018, including the finalisation of the framework and the development of methodologies Ofgem will use to set the sector-specific price controls.¹³²

¹³⁰ The cap and floor regime provides developers with a top-up payment if income is below a floor level, which is funded by transmission customers. Where a developer's income exceeds a pre-specified cap level, the excess is transferred to transmission customers.

¹³¹ Ofgem, [Decision on the Initial Project Assessment of the GridLink, NeuConnect and NorthConnect interconnectors](#), January 2018

¹³² Ofgem, [RIIO2 Framework Consultation](#), March 2018

201. Innovation is at the heart of the RIIO framework. In spring 2017, Ofgem published its decision¹³³ following the review of the innovation funding schemes.¹³⁴ Various changes were made, including some designed to enhance access for third parties.

Innovation Link

202. Ofgem launched the Innovation Link in December 2016 with a service to provide fast, frank feedback for energy sector innovators on the regulatory implications of their business propositions. In the first year, Innovation Link was contacted by over 150 innovators. Topics are diverse and cover all aspects of the sector including innovative supply, peer-to-peer trading models and optimising use of distributed generation and storage.

203. In February and October 2017, Innovation Link invited applications for a regulatory sandbox for energy, which allows innovators to trial business models that benefit consumers. As well as supporting innovation, the sandbox allows the Innovation Link to further develop Ofgem's understanding of new business models. Innovation Link received over 30 applications in October 2017, and Ofgem is in the process of determining final candidates for the regulatory sandbox.

Changes to the legal/regulatory framework since April 2017, including any new regulations put in place during the year, which might significantly affect competition and innovation

Future Retail Regulation (FRR)

204. Ofgem has committed¹³⁵ to relying more on enforceable principles, and less on prescriptive rules, when regulating energy suppliers.¹³⁶ Relying more on principles will promote innovation and competition in an evolving retail market, while allowing Ofgem to continue providing effective protection to consumers as new risks emerge. To that end, Ofgem is working to reform priority areas of the retail energy supply licences to drive culture change in the industry by making suppliers think harder about how to achieve outcomes that put

¹³³ Ofgem, [The Network Innovation Review: our policy decision](#), March 2017

¹³⁴ Ofgem provides essential backing to innovative projects which aim to help make the energy networks smarter, and accelerate the development of a low carbon energy sector and delivering financial benefits to consumers. Further information is available from Ofgem's website on funding schemes regarding [electricity](#) and [gas](#) distribution.

¹³⁵ This started with the Standards of Conduct in 2013 and Ofgem published a consultation on placing greater reliance on principles based regulation in December 2015.

¹³⁶ Ofgem, [Our Strategy](#), p.16, 2014.

consumers at the heart of all they do rather than simply using a box-ticking approach.

205. Following on from the removal of 30 pages of prescriptive rules on tariff design from the supply licences in November 2016,¹³⁷ Ofgem reformed the rules relating to sales and marketing activities conduct with consumers.¹³⁸ In June 2017, Ofgem introduced five new enforceable principles to ensure suppliers enable consumers to make informed choices about their energy supply, while also removing around 20 pages of prescriptive rules.
206. Ofgem also completed important reforms to the Standards of Conduct in October 2017 – the cross-cutting rules that set out Ofgem’s overarching expectations of supplier conduct in the market.¹³⁹ The new rules clarify the special responsibility that suppliers have for vulnerable customers, and the importance of suppliers ensuring that all households have the information they need to engage with the market. The Standards of Conduct put responsibility on suppliers to determine how best to do this and reinforce Ofgem’s expectation that they must put consumers at the heart of their businesses.

Price protections

207. Ofgem has extended the pre-payment meter (PPM) safeguard tariff to cover, from February 2018, around 1 million customers receiving the Warm Home Discount who are not already covered by the PPM cap and who are on standard variable tariffs (SVTs). Ofgem estimates that eligible customers will initially make annualised savings of around £115 a year. These annualised savings will fall to around £66 a year when the level of the safeguard tariff rises in April 2018 due to higher energy costs.¹⁴⁰
208. To limit any unintended effects on competition, the initial protections have been based on the CMA’s prepayment methodology, which includes a level of headroom and a prepayment uplift. Ofgem therefore expects gains from switching, competition and sufficient allowance for innovation to continue.
209. In December 2017, Ofgem consulted on using existing statutory powers to extend financial protection to additional vulnerable customers, which would cover an additional approximately 2 million vulnerable customers in winter

¹³⁷ Ofgem, [Modification of electricity and gas supply licences to remove certain RMR Simpler Tariff Choices rules](#), September 2016

¹³⁸ Ofgem, [Final decision: enabling consumers to make informed choices](#), April 2017

¹³⁹ Ofgem, [Final decision: Standards of conduct for suppliers in the retail energy market](#), August 2017

¹⁴⁰ Ofgem, [Ofgem acts to cut 1 million vulnerable households’ bills](#), February 2018

2018/19. The methodology for setting this extension is still under consideration.

210. In February 2018, the government introduced legislative proposals for a temporary tariff cap for customers on SVTs and default tariffs. The proposed legislation creates a new statutory role for Ofgem to deliver this measure for government. Ofgem has already started work on the design of the tariff cap and will continue refining this with stakeholders.
211. Feedback received on Ofgem's December consultation proposals, along with other stakeholder evidence and further consultations, will be factored into Ofgem's thinking in relation to the design of both the broader vulnerable protections and the government's proposed default tariff cap. The intention is to introduce the broader vulnerable extension only if the default cap were not introduced by winter 2018/19.
212. Like the initial protections applied to vulnerable customers, Ofgem would expect any extended vulnerable price cap or default cap to include a level of headroom. This should allow suppliers to compete by setting prices below the level of the cap and maintain the incentive for customers to switch supplier. This should ensure that competition can co-exist with the price control, driving innovation and cost reductions. Ofgem also notes in this regard that the draft legislation would place a duty on Ofgem to have regard to enabling suppliers to compete for domestic customers and the need to maintain incentives for consumers to switch suppliers.

Transmission Constraint Licence Condition

213. Since 2012, the Transmission Constraint Licence Condition (TCLC) has set rules for electricity generators during periods of transmission constraint. The TCLC was developed in response to concerns regarding a lack of competition during periods of transmission constraints, during which some firms hold temporary market power. These rules are estimated to have saved consumers over £150 million, in particular as the rules prohibit generators charging more than their marginal costs to turn down their power during transmission constraints. As a result, wind generators have significantly reduced the prices they charge for reducing their output when there is too much power in a constrained area of Great Britain's network.

Competition in Onshore Transmission

214. As described in paragraph 196, Ofgem is continuing to take forward work to introduce competition for the financing, construction and operation of high value, new and separable assets in the onshore transmission network. As

such, by using market mechanisms that harness competition or replicate the outcomes of competition, Ofgem aims to:

- provide value for consumers, protecting them from undue costs and risks
- deliver transmission infrastructure necessary to address system needs
- bring about timely, economic and efficient development of Great Britain's electricity transmission system
- attract new approaches to the financing, design, construction and operation of transmission infrastructure

215. In the 2017 Annual Concurrency Report, Ofgem indicated its intention to introduce the CATO regime to deliver the above objectives. In June 2017, Ofgem stated that it was deferring further development of the CATO regime until the timing of enabling legislation was more certain.
216. In August 2017, Ofgem published a consultation, in the context of the Hinkley-Seabank project,¹⁴¹ setting out two potential alternative delivery models that it considered would introduce a significant proportion of the benefits of competition (particularly in terms of savings) that would have been realised through the CATO regime – the 'SPV (Special Purpose Vehicle) model' and the 'Competition Proxy' model.
217. Under the SPV model, the incumbent Transmission Owner (TO) would run a competition for the construction, financing and operation of the project through a project-specific SPV. The SPV would deliver the project under the terms of a contractual arrangement (the "delivery agreement") with the TO. The TO would retain regulatory responsibility (under the terms of its transmission licence) for, and operational control of, the project. The SPV would finance, construct and operate the project for a fixed period (typically 25 years from the start of operations), in return for a defined revenue under its delivery agreement with the TO.
218. Under the Competition Proxy model, the incumbent TO would deliver the project directly. Ofgem would set the TO's allowed revenue in line with the outcome it considers would have resulted from an efficient competition for

¹⁴¹ The Hinkley-Seabank project is a proposed c£800m onshore electricity transmission project to connect the new nuclear power station at Hinkley Point C by 2025.

construction, financing and operation of the project. Ofgem would fix this revenue for a defined period (typically 25 years from the start of operations).

219. In late January 2018, Ofgem consulted on applying the Competition Proxy delivery model to the Hinkley-Seabank project.¹⁴² The savings that this model will deliver to consumers will depend on the allowed cost of capital (to be finalised in late 2018), but are anticipated to be at least £100m on a net present value basis over 25 years. Ofgem also confirmed that it intends to apply the Competition Proxy or SPV delivery models for all future new, separable and high value onshore transmission projects that come forward for funding from 2018.

Energy market remedies

220. The CMA's energy market investigation, which followed Ofgem's referral and concluded in June 2016, recommended a package of remedies to Ofgem, with the aim of making competition in the market more effective. These remedies are expected to have market-wide implications and enhance competition, most significantly by increasing consumer activity and engagement, and therefore putting additional pressure on energy retailers to compete vigorously for custom.
221. The CMA's report contained 26 remedy recommendations to Ofgem. In August 2016, Ofgem set out its high-level approach to implementing those remedies in its Implementation Strategy and followed this up with detailed milestones in its Implementation Plan in November 2016. It is anticipated that by the middle of 2018 approximately 80% of the recommendations will have been fully implemented.
222. During the period of this report, Ofgem has initiated the first trials under the new licence condition to require suppliers to participate in trials, including trials of elements connected with the establishment of a disengaged customer database; introduced principles to support tariff comparability; and decided on the partial removal of the Whole of Market requirement for Confidence Code accredited price comparison websites as well as consulting on new Code requirements. Ofgem also published its first State of the Market report,¹⁴³ which gave an assessment of the impact of regulatory policies on consumer outcomes, which should support increased trust and confidence in the market.

¹⁴² Ofgem, [Update on competition in onshore electricity transmission](#), January 2018

¹⁴³ Ofgem, [State of the energy market 2017](#), October 2017

223. A number of the CMA's remedies also came into force during the course of this year including remedies dealing with micro-business price transparency and the transfer of gas tariff pages (see CMA chapter for further detail).¹⁴⁴

Competition in electricity distribution connection

224. New connections to electricity distribution networks can be provided by the regional monopoly Distribution Network Operator (DNO)¹⁴⁵ or an alternative connection provider. In each regional area, the DNO is the sole provider of several essential services needed to make a connection. The DNO provides these essential services to both its own connections business and its competitors.
225. Ofgem has been working to facilitate competition in electricity connections since 2000. Effective competition has developed in some, but not all, sections of the connections market. Ofgem's 2014 review into the connections market found that the DNOs' role in the connection process (as the sole provider of essential connection services) was restricting the development of effective competition. To address these issues, Ofgem introduced a new licence condition and enforceable code of practice (CoP). The CoP governs how DNOs provide essential services to the market. In January 2015 Ofgem also opened a Competition Act 1998 investigation into allegations against one DNO, closing the investigation in November 2016 after accepting commitments from the DNO concerned.
226. Since 2015, Ofgem has received positive feedback from competitors about the improvements made by the DNOs. In particular, Ofgem received encouraging feedback about the positive impact of the CoP on the DNOs - both culturally and practically. Ofgem was also pleased to see the progress made by the DNOs to address some of the issues that did not relate to their role in the connection process. For example, in May 2017 Ofgem approved a Distribution Connection and Use of System Agreement (DCUSA) modification proposed by UK Power Networks to simplify billing arrangements for large customers with unmetered assets on both Independent Distribution Network Operator and DNO networks.¹⁴⁶
227. Due to the relatively short period of time since Ofgem introduced arrangements to facilitate effective competition and the positive feedback that

¹⁴⁴ 11 Tariff Codes grouped together for the purpose of allocation to a single Retail Gas Supplier.

¹⁴⁵ DNOs are holders of an electricity distribution licence and responsible for owning, operating and maintaining the electricity distribution networks.

¹⁴⁶ DCUSA DCP282 "[Embedded Distribution Network Operator \(EDNO\) UMSO](#)", May 2017

it received since then, Ofgem decided not to undertake a further review of the electricity distribution connections market in 2017.¹⁴⁷ Facilitating effective competition in the electricity distribution connections market continues to be a key priority for Ofgem and it will continue to engage with the stakeholders to ensure that this happens.

Cases under the competition prohibitions since April 2017

Chapter I investigation (Undisclosed parties)

228. In August 2016, Ofgem opened an investigation into a potential infringement of Chapter I of the Competition Act 1998 which concerns anti-competitive agreements and concerted practices affecting the energy sector. This investigation is limited to a small number of parties.¹⁴⁸ A decision to continue with the investigation was taken in December 2017.
229. Since April 2017, Ofgem has continued to gather evidence via information requests and through voluntary and compulsory interviews with key witnesses.

Chapter II investigation (Undisclosed party)

230. In August 2017, Ofgem opened an investigation into a potential infringement of Chapter II of the Competition Act 1998 and Article 102 of the Treaty on the Functioning of the EU relating to a possible abuse of dominance by an undertaking providing services to the energy industry.¹⁴⁹ A decision to continue with the investigation was taken in December 2017. The case team is supported by CMA colleagues providing expertise in competition economics.

Advisory letters issued following a complaint

231. A complaint alleging a potential breach of the Chapter I infringement relating to the energy sector was received by Ofgem in October 2017. Ofgem did not reach a view on whether the Section 25 threshold was met. However, advisory letters were sent to industry participants in December 2017.

¹⁴⁷ Ofgem, [Competition in electricity distribution connections](#), November 2017

¹⁴⁸ The identities of the parties have not been released

¹⁴⁹ The identity of the party has not been released

Market studies undertaken since April 2017

232. There have been no market studies opened under the Enterprise Act 2002 since April 2017 and no market studies that are ongoing.

Decisions taken since April 2017 to use Ofgem's direct regulatory powers instead of competition prohibition powers

233. Under Schedule 4 of Enterprise and Regulatory Reform Act 2013, the CMA is required to report on any decision taken by a sector regulator, in respect of a case in relation to which the regulator is satisfied that its functions under Part 1 of the Competition Act 1998 are exercisable, 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 2017, there have been no occasions on which Ofgem has been satisfied that its functions under Part 1 of Competition Act 1998 are exercisable but has decided that it is more appropriate for it to proceed by exercising functions other than those it has under Part 1 of the Competition Act 1998.

234. Ofgem has a duty¹⁵⁰ to consider, before issuing a final order, confirming a provisional order, or imposing a penalty in relation to a licence order, in the gas and electricity sectors, whether it would be more appropriate to proceed under competition powers. Since April 2017, in every instance in which Ofgem has decided whether to open an investigation into a possible breach of the applicable regulations, or has taken any other decision under its enforcement powers,¹⁵¹ it has first considered whether competition powers were applicable before using sectoral powers.¹⁵² Since April 2017, Ofgem has not identified any cases, among the sectoral cases opened, where it would have been more appropriate to proceed under its competition powers

Future work, and proposed changes to regulation, to improve competition and innovation

Future supply market arrangements

235. Ofgem considers that the current arrangements for retail energy market competition (the 'supplier hub' model) have reinforced the position of incumbent suppliers and stifled innovation and competition. As we move towards a smarter energy system, new technologies and business models,

¹⁵⁰ Under sections 28 and 30A of the [Gas Act 1986](#) and sections 25 and 27A of the [Electricity Act 1989](#); this is commonly known as the 'primacy obligation'.

¹⁵¹ See Section 2, Ofgem, [Enforcement Guidelines](#), October 2017

¹⁵² See previous footnote

and better access and use of data can offer significant benefits to consumers. There is evidence (including via Ofgem's Innovation Link) that current market arrangements are holding back the realisation of these benefits.

236. In this context, Ofgem is now exploring whether the supplier hub model is still fit for purpose or whether Ofgem and government should consider changes as the energy system evolves. Ofgem is seeking to give the market space to become more dynamic and competitive, while ensuring consumer protections remain strong and robust. Ofgem is currently in the process of scoping out the nature and scale of any potential reforms to improve competition and innovation relating to provision of energy supply and related services.¹⁵³ Ofgem intends to set out its views by summer 2018.

Half-hourly settlement

237. Ofgem is building on the rollout of smart meters that enable customers' actual electricity usage to be recorded every half hour by reviewing the arrangements for electricity settlement. In April 2017, half-hourly settlement became mandatory for medium and large business customers. In June 2017, following a design and implementation process which Ofgem led with industry and consumer stakeholders, cost-effective arrangements for elective half-hourly settlement came into effect. In July 2017, Ofgem launched a Significant Code Review for Settlement Reform. The decision on if, when and how to require all suppliers across the market to settle half-hourly will be made in the second half of 2019.
238. Ofgem's aim is a design for market-wide half hourly settlement reform that exposes suppliers to the true cost of their customers' usage and incentivises them to take steps to help their customers move their consumption to times of the day when electricity is cheaper to generate and transport, for example, by offering smart tariffs and other innovative products. Ofgem expects the settlement reform to help lower customers' bills, reduce carbon emissions and enhance security of supply by increasing the flexibility of the energy system, and to encourage innovation and competition by lowering barriers to entry and enabling new business models.

Regulating the retail gas and electricity markets

239. As part of its move to principles based regulation (see paragraphs 204 to 206), Ofgem has prioritised reforms to the rules regulating supplier-customer

¹⁵³ Ofgem, [Future of supply market arrangements – call for evidence](#), November 2017

communications to make sure consumers get the right information, at the right time and in the right format. Supplier-customer communications play a central role in delivering positive outcomes for consumers. Through this work Ofgem is seeking to drive innovation to maximise the effectiveness of these communications by putting in place new enforceable principles that focus on the outcomes suppliers must deliver for consumers and removing unnecessary prescription. Ofgem considers that improved supplier-customer communications should drive improved consumer engagement in the market, including switching tariff or supplier.

240. Ofgem will focus on the primary regulated communications, including bills. To develop its thinking and proposals, Ofgem has engaged with consumer groups and industry. It plans to consult on its proposals in spring 2018, working towards implementing the changes in autumn 2018.

Energy market investigation remedies

241. As described in paragraph 191, Ofgem is progressing work on the remedies proposed by the CMA. In 2018/2019, Ofgem will be looking to conduct a number of further trials using its powers. Ofgem will also be looking to establish the disengaged customer database.

Flexibility

242. Electricity system flexibility (including new sources of flexibility offered by smart technologies) is integral to the transition to a cost-effective, dynamic, efficient and low-carbon competitive market. In July 2017, Ofgem, jointly with the government, published a Smart Systems and Flexibility Plan. This Plan set out a number of actions to:
- remove barriers to accessing and competing in the energy system for smart, innovative technologies, through making changes to licences, planning, connections and charging for storage
 - enable smart homes and business, including making changes that support suppliers to offer smart tariffs and new competitive offerings, looking at standards for home appliances and customer protection issues, including cyber security
 - make markets work for flexibility, by opening up new markets as alternatives to traditional infrastructure investment and improving access to existing markets for non-traditional, innovative providers, improving coordination across the systems and enabling the true value of services to be realised, supporting efficient investment

243. These actions are allocated across Ofgem, government and industry. They will support the efficient evolution of the system, keeping bills as low as possible for consumers. A Smart Systems Forum has been set up to steer the progress of the plan and to bring in a range of stakeholders from different disciplines to consider new issues as they arise.

Switching programme

244. Ofgem is leading a major programme to improve consumers' experience of switching by designing and implementing a new switching process that is reliable, fast and cost-effective. The aim is to facilitate greater engagement in the retail energy market by increasing consumers' confidence in their ability to switch supplier with ease. Retaining the existing arrangements (including a three-week switching process) would hold back innovation and act as a disincentive for new entrants. Increased switching will exert additional competitive pressure on suppliers, causing them to consider the prices they charge and the services they provide for fear of losing market share.
245. Over the past year, Ofgem has been working in partnership with retail energy market participants to assess proposals. In September 2017, Ofgem published a draft impact assessment of a range of reform packages and consulted on its preferred option. In February 2018, Ofgem published its decision to implement reliable and fast switching using a new, centralised gas and electricity switching service. This would allow a domestic consumer to switch by the end of the next working day (with non-domestic consumers being the day after). Ofgem is continuing to work with the industry to develop the detailed design, delivery, commercial and governance arrangements.

F. Financial Services – Financial Conduct Authority/Payment Systems Regulator

F.1 Financial Conduct Authority

246. The Financial Conduct Authority (FCA) regulates the conduct of financial services firms in the UK. It has an over-riding strategic objective to ensure that the markets it regulates work well. To advance this objective, the FCA also has three operational objectives. These are to secure an appropriate degree of protection for consumers, to protect and enhance the integrity of the UK financial system, and to promote effective competition in the interests of consumers. The FCA also has a competition duty that means it must consider the impact of its activities on competition, even activities that are mainly about consumer protection or market integrity.
247. Most of the FCA's powers and duties come from the Financial Services and Markets Act 2000 (FSMA). The FCA also has powers to:
- enforce the prohibitions in the Competition Act 1998 and the Treaty on the Functioning of the EU concurrently with the Competition and Markets Authority (CMA)
 - carry out market studies and make market investigation references involving the financial services sector to the CMA under the Enterprise Act 2002

General developments since April 2017 from a competition or policy perspective

248. The financial sectors that the FCA regulates represent more than 100 separate economic markets. The FCA aims to ensure that its regulation is proportionate, up to date and strikes the right balance between allowing innovation that delivers consumer benefits and ensuring consumers are adequately protected.
249. This year, the FCA continued to use market studies and thematic reviews to assess whether markets or individual firms' conduct are leading to poor outcomes for consumers. It has intervened to support consumer choice, including the choice to move from an unsatisfactory supplier to a better one, and has put in place measures where it has found that firms are not acting in consumers' interests. The FCA has also continued to ensure that its policy and rules support, and do not hinder, improved competition through innovation and new firms entering the market. It has also investigated

individual firms where it suspects breaches of competition law. This year the FCA has:

- published its Mission, Approach to Competition, Approach to Supervision, Approach to Consumers, Approach to Enforcement and Approach to Authorisation
- continued to encourage and support the development and use of innovative technology through its Innovate programme
- continued to support new firms entering the market through the Bank Start-up Unit and a new Asset Management Authorisation Hub
- progressed CMA recommendations for digital comparison tools and retail banking
- continued its programme of market studies, including publishing the final report of its Asset Management market study in June 2017
- made a market investigation reference to the CMA on investment consultancy and fiduciary management services
- issued a statement of objections in a competition investigation and three 'on notice' letters to firms regarding competition law
- published the second Annual Competition Report, covering the period from 1 April 2016 to 31 March 2017¹⁵⁴

The FCA's Mission and Approach to Competition

250. In April 2017, the FCA published its Mission document.¹⁵⁵ The FCA's Mission is to serve the public interest through the objectives given to it by Parliament. The Mission document explains how this will affect the decisions the FCA takes. It explains the FCA's intervention framework for the strategic decisions it makes, the reasoning behind its work and the way it chooses the tools to do it.

251. In December 2017, the FCA published its Approach to Competition document for consultation.¹⁵⁶ It outlines how the FCA advances its operational objective

¹⁵⁴ FCA, [Competition annual report 2016/17](#), July 2017.

¹⁵⁵ FCA, [Our Mission 2017 – How we regulate financial services](#), April 2017.

¹⁵⁶ FCA, [Our Approach to Competition](#), December 2017.

to promote competition in the interests of consumers and its competition duty, in light of the decision-making framework published in its Mission.

252. The Approach to Competition document complements previous FCA documents such as its Guidance on the FCA's approach to advancing its objectives¹⁵⁷ and its Guidance on its powers and procedures under the Competition Act 1998 (FG15/08),¹⁵⁸ and on market studies and market investigation references (FG15/09).¹⁵⁹ In particular, it explains how market studies fit within the FCA's decision-making framework and how they are conducted in practice.

Supporting new entry and the use of innovative technology

253. The FCA actively encourages and supports the development and take-up of innovative technology through its Innovate programme. This includes the Direct Support Team, the Regulatory Sandbox and the Advice Unit. In particular:
- The Direct Support Team supports businesses in understanding the regulatory framework and how it applies to them. This includes using the framework to prepare and make an application for FCA authorisation to undertake regulated activities
 - The Regulatory Sandbox allows businesses to test innovative products, services, business models and delivery mechanisms in a live environment while ensuring that consumers are appropriately protected¹⁶⁰
 - The Advice Unit widened its scope in June 2017 to include firms developing automated models within the mortgage, general insurance and debt sectors. The Advice Unit now also accepts firms that want to provide guidance instead of regulated advice, as well as firms that do not intend to seek authorisation. The Advice Unit has published signposts to existing rules and guidance to help firms more widely. It also consulted on general guidance informed by the feedback it has issued to firms. This now forms part of the non-Handbook guidance on streamlined advice and the fact-finding process published in September 2017¹⁶¹

¹⁵⁷ FCA, [The FCA's approach to advancing its objectives 2015](#), December 2015.

¹⁵⁸ FCA, [The FCA's concurrent competition enforcement powers for the provision of financial services](#), July 2015.

¹⁵⁹ FCA, [Market studies and market investigation references](#), July 2015.

¹⁶⁰ Further information on the Regulatory Sandbox and Direct Support function can be found in the CMA's [Annual report on concurrency 2017](#).

¹⁶¹ FCA, [FG17/8: Streamlined advice and consolidated guidance](#), December 2017.

254. Since October 2014, the Innovate programme has received over 1,000 requests for support and has assisted or is assisting 46% of these firms.

New Bank Start-up Unit

255. The New Bank Start-up Unit is a joint initiative with the Prudential Regulation Authority to give information and support to newly authorised banks and firms thinking of setting up a new bank in the UK. The aim of this Unit is to reduce barriers to entry for prospective banks and support new banks by helping them to navigate the regulatory requirements. In turn, this stimulates competition and drives innovation to promote better outcomes for consumers. For the period 1 April 2017 to 31 March 2018, ten new banks have been authorised.¹⁶²

Asset management authorisation hub

256. In October 2017, the FCA launched a new Asset Management Authorisation Hub. The hub offers new firms pre-application meetings, dedicated case officers and access to a new website portal. This will make it easier for firms to understand how the FCA works, make a complete submission, and transition from authorisation to supervision regimes.

CMA's recommendations in relation to retail banking and digital comparison tools

257. The FCA has been taking forward wide-ranging and strategic work to implement the remedies recommended by the CMA in the retail banking market which have the potential to promote competition. Key areas are:
- Improving service: In December 2017, the FCA made new rules requiring firms to publish information about key services relating to current accounts, supplementing core service quality metrics required by the CMA (see CMA chapter)¹⁶³
 - Prompting increased customer engagement: The FCA has undertaken a series of pilots with banks for prompts designed to encourage consumers' engagement with their bank account. Approximately 1 million personal current accounts and almost 2 million business accounts were eligible to receive prompts as part of the pilot scheme

¹⁶² An additional four banks have been authorised for the purposes of implementing Ring-fencing legislation.

¹⁶³ FCA, [PS17/26: Information about current account services](#), December 2017.

- Improved transparency for overdraft users: The FCA is reviewing the effectiveness of the Monthly Maximum Charge for unarranged overdrafts that the CMA introduced in August 2017. The FCA is also carrying out testing and research on text message alerts designed to raise awareness of overdraft usage and costs. The FCA published an update of its work on overdrafts as part of the High-cost Credit review in January 2018.¹⁶⁴ All of this work will inform the policy proposals on overdrafts that the FCA will put forward towards the end of 2018

258. The FCA shares the CMA's aspiration of ensuring that digital comparison tools deliver good outcomes for consumers and welcomes the work the CMA carried out in its market study. The areas for action identified by the FCA in response to the recommendations made by the CMA can be found in the Introduction.

Changes to the legal/regulatory framework since April 2017, including any new regulations put in place during the year, which might significantly affect competition and innovation

Investment management

259. In June 2017, the FCA published the final report of its **Asset Management market study**.¹⁶⁵ The aim of the market study was to understand whether competition is working effectively to enable investors to get value for money when purchasing asset management services. The final report confirmed that:

- price competition is weak in a number of areas of the industry
- there is evidence of sustained, high profits over a number of years
- investors are not always clear what the objectives of funds are
- fund performance is not always reported against an appropriate benchmark
- there are concerns about the way the investment consultant market operates

260. The FCA's final report proposed a package of remedies which it has been implementing. As part of this package, the FCA has established a working group of industry and investor representatives on institutional disclosure, with

¹⁶⁴ FCA, [High-cost Credit Review - update](#), January 2018.

¹⁶⁵ FCA, [Asset Management Market Study – Final Report](#), June 2017.

a view to agreeing a template for disclosure of costs and charges. It has also undertaken behavioural testing of ways to improve the effectiveness of new disclosure remedies and chaired a working group to develop clearer fund objectives. The package of remedies outlined in the final report around governance and transparency are aimed at boosting competitive pressure while ensuring a minimum level of protection for investors.

261. For example, the measures to improve fund governance are designed to provide increased clarity of the FCA's expectations of Authorised Fund Managers (AFMs) in providing value for money, accountability for senior managers and independence within an AFM's governance body. The FCA considers these measures, taken together, should generate better value products and more choices for investors. At the same time, by requiring AFMs to be transparent about their value for money assessments, the FCA expects that this will provide a spur to firms to compete on this basis.
262. Following the publication of the final report, the FCA referred the supply and acquisition of investment consultancy services in the UK to the CMA for an in-depth market investigation in September 2017 (see paragraph 285 and the CMA chapter)

Wholesale financial markets

263. In March 2017, the FCA proposed a package of rule changes¹⁶⁶ which aimed to ensure that a prospectus or registration document is published before any connected research is released and that providers of 'unconnected' research have access to the issuer's management.¹⁶⁷ This followed the FCA's **Investment and Corporate Banking market study** which identified areas of the initial public offering (IPO) process that needed improvement. For instance, effective competition was inhibited because unconnected analysts faced barriers to producing IPO research. This reduced competitive pressure that might otherwise improve the quality of connected research, making it more difficult for investors to access competing views on the offering and the issuer's prospects.¹⁶⁸

¹⁶⁶ FCA, [CP17/5: Reforming the availability of information in the UK equity IPO process](#), March 2017.

¹⁶⁷ Research is considered to be 'connected' where it is produced by analysts within banks that are part of the IPO's book-running syndicate providing underwriting or placing services to the issuer (syndicate banks). Research is considered to be 'unconnected' where it is produced by analysts within non-syndicate banks or independent research providers.

¹⁶⁸ Following broad support from respondents, the FCA confirmed those new rules in October 2017, with an implementation date of 1 July 2018.

264. In June 2017, the FCA also published final rules prohibiting restrictive contractual clauses, implemented from 3 January 2018.¹⁶⁹ This applies to right of first refusal clauses and right to act clauses in investment and corporate banking engagement letters and contracts, where these clauses cover future corporate finance services carried out from an establishment in the UK. The FCA was concerned that these clauses might restrict competition as some clients, especially smaller ones, faced pressure to reward their relationship/lending bank or corporate broker with future primary market services even where they might be better off with an alternative supplier.

Retail lending

265. In February 2018 and following its **Credit Cards market study**, the FCA published its final policy statement on new rules for the credit card market.¹⁷⁰ Under the new rules, firms have to take a series of steps to help customers in persistent debt. These include a requirement on firms to respond early to signs that customers are in financial difficulty and take steps to help those who are unable to repay their balance more quickly, for example, by reducing, waiving or cancelling any interest or charges.

266. These interventions aim to tackle a market failure where a significant minority of customers carry over a credit card balance for a long period of time without significantly paying it down. The proposed measures aim to incentivise firms to encourage customers to repay more quickly where they can afford to do so, and show forbearance where customers are struggling to repay. The FCA's proposals on early intervention are intended to encourage credit card firms to identify customers at risk of potential financial difficulties before they materialise.

267. While these interventions are not directly addressed at encouraging greater competition, they may nonetheless do so. This is because a prompt by a bank to review options to repay the debt may encourage those in persistent debt to look at competing offers such as balance transfer¹⁷¹ deals. This is likely to lead to more competition between firms who will wish to win customers whose debt is attracting high interest charges. At the same time, balance transfer

¹⁶⁹ FCA, [PS17/13: Investment and corporate banking: prohibition of restrictive contractual clauses](#), June 2017.

¹⁷⁰ FCA, [PS18/4: Credit card market study: Persistent debt and earlier intervention – feedback to CP17/43 and final rules](#), February 2018.

¹⁷¹ A balance transfer is when a customer transfers all or part of the balance outstanding on one credit card product to another credit card product. A fee is typically charged and added to the transferred balance.

deals are likely to be in customers' interests if it helps them to repay their debt more quickly without having to increase monthly payments.

Retail banking – payment services

268. The FCA gained responsibilities for monitoring and enforcing compliance with certain provisions of the Payment Services Regulations 2017 which implemented the Second Payment Services Directive (PSD2).¹⁷² The FCA has worked with HMT to implement PSD2 and in July 2017 jointly published expectations for new account information and payments initiation services. In particular, the FCA has noted the potential benefits to the market of common API standards being developed; and using this as the basis of secure access to the broader range of accounts under PSD2. The FCA also continues to sit as an observer on the Open Banking Implementation Entity that was set up as part of the CMA's retail banking remedies. The Implementation Entity is currently working on ensuring compliance with PSD2 and on extending the scope of its API standards to all payment accounts that are in the scope of PSD2 (for example, e-money and credit card accounts).

General insurance and protection

269. In April 2017 the FCA introduced new rules requiring insurers to disclose the previous year's premium on the insurance renewal notices they provided to consumers. These rules are intended to address concerns about levels of consumer engagement, firms' treatment of existing consumers at renewal and the lack of competition that results from this. As a result of the **General Insurance Add-ons market study**, the FCA is also conducting a pilot to publish indicators of value¹⁷³ for four general insurance products. The FCA expects that publishing this data will incentivise firms to improve value. The FCA published the first two sets of pilot data in January 2017 and March 2018.

Pensions and retirement income

270. In May 2017, the FCA published a policy statement and final rules to implement the recommendations it made following its **Retirement Income market study**.¹⁷⁴ In particular, the FCA recommended an annual

¹⁷² [Directive 2015/2366/EU](#) of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC

¹⁷³ Indicators of value are intended to represent the value for money that consumers receive for purchasing general insurance add-ons.

¹⁷⁴ FCA, [Increasing consumer engagement in the annuities market](#), July 2016.

personalised information prompt to consumers to support greater levels of shopping around. The prompt was implemented in March 2018.¹⁷⁵

271. In June 2017, the FCA also published new proposals on firms' advice on pension transfers where consumers have safeguarded benefits. This primarily affects advice given about transfers from defined benefit to defined contribution pension schemes. The proposed changes include requiring transfer advice to be provided as a personal recommendation, and replacing the current transfer value analysis with a comparison to show the value of the benefits consumers will give up.
272. In reaching its view on these rule changes, the FCA explored and consulted on how these changes would be consistent with its competition duty, while protecting consumers. It concluded that giving consumers information that was bespoke to their circumstances would give them more confidence to properly explore their pension options. This would potentially drive more competition between advisory and retirement product markets. Increasing clarity around the FCA's expectations of advisers will also reduce barriers for firms that want to advise on pension transfers. This improved competition for consumers should in turn act as a downward pressure on the price of advice.

Cases under the competition prohibitions since April 2017

273. During the period of this report, no new investigations under the Competition Act 1998 have been opened. One existing investigation into conduct in the aviation insurance sector has been closed, as the European Commission has taken the matter over.
274. The FCA continued with its investigation into anti-competitive agreements and concerted practices in the asset management sector. In November 2017, it issued a statement of objections to four firms, alleging they had shared information by disclosing the price they intended to pay, or accepting such information, or both, in relation to one or more of two IPOs and one placing, shortly before the share prices were set.
275. The FCA has made use of other tools to strengthen compliance with the Competition Act 1998. The FCA has issued three 'on notice' letters to firms¹⁷⁶ where evidence suggests competition law has been potentially infringed, but

¹⁷⁵ FCA, [Implementing information prompts in the annuity market](#), November 2016.

¹⁷⁶ The FCA's warning letters are known as 'on notice' letters. This is to avoid possible confusion with the 'private warnings' letters which are issued under FSMA.

where the FCA's other priorities¹⁷⁷ mean it is less likely to open an investigation. The types of behaviour which lead to the on notice letters included inappropriate exchanges of competitively sensitive information across a range of financial services sectors. As a result of these letters, the relevant firms have undertaken a number of initiatives to strengthen their compliance with competition law. The FCA did not issue any advisory letters (intended to increase awareness of competition law and achieve greater compliance) during the period of this report.

276. The FCA's programme of Competition Act-related work also includes working closely with other regulators and competition authorities. Besides regularly attending UKCN meetings, in December 2017 the FCA attended the European Competition Network sub-group meeting on financial services. The FCA also has an ongoing programme of engagement with trade bodies, professionals and firms. For example, the FCA held a competition law presentation at the BVRLA Leasing Broker Forum on 18 October 2017. The event aimed to increase awareness of competition law and included information on the role of the FCA as a concurrent competition regulator.
277. The FCA is also liaising closely with, and providing sectoral expertise to, the CMA in its investigation relating to home insurance products. This investigation concerns the use of certain retail 'most favoured nation' clauses by a price comparison website (which is described in further detail in the CMA chapter).

Market studies undertaken since April 2017

278. The FCA can conduct market studies under either the Enterprise Act 2002 or FSMA. The FCA decides which route is most appropriate on a case by case basis. The FCA has not opened or closed any market studies under the Enterprise Act 2002 since April 2017 and no such market studies are ongoing.
279. The FCA is currently carrying out the following market studies under FSMA:

Mortgages

280. The **Mortgages market study** aims to understand whether customers face challenges in making effective decisions in the mortgage market. It is also exploring whether commercial arrangements between lenders, brokers and other players lead to conflicts of interest or misaligned incentives that cause harm to consumers. In March 2017, the FCA sent a short survey to around

¹⁷⁷ See further paragraph 3.7 of FCA, [The FCA's concurrent competition enforcement powers for the provision of financial services](#), July 2015.

2,100 firms (around 100 lenders and around 2,000 intermediary firms) and a more detailed request for information to around 45 firms (around 20 lenders, 15 intermediary firms and 10 ancillary service providers). The FCA will publish an interim report in the first quarter of the 2018 financial year and a final report later in 2018/19.

Investment Platforms

281. In July 2017, the FCA launched its **Investment Platforms market study**.¹⁷⁸ This study aims to understand how investment platforms compete for both advised and non-advised retail investors and explores:

- whether there are any relationships in the supply chain that are inhibiting competition and making it difficult for consumers to make informed choices
- whether financial advisers are putting sufficient pressure on platforms to compete and to pass the benefits onto consumers
- whether platforms compete between each other to offer products and services that meet investors' expectations

The FCA is assessing the information collected and aims to publish an interim report in summer 2018.

Wholesale Insurance Brokers

282. In November 2017, the FCA launched a market study to assess how competition is working in the wholesale insurance broker sector.

283. Given the size of the wholesale insurance sector and the type of large scale risks it covers, the way it functions can have a wide-ranging impact on the broader economy. If businesses cannot get appropriate cover or pay more for services than they should, it can affect their ability to operate and grow. Effective competition contributes to ensuring London remains an international centre for insurance. The FCA is exploring how competition is currently working and whether it could work better.

284. The FCA aims to publish an interim report by the end of 2018 which will set out its analysis, preliminary conclusions and any potential solutions to address concerns.

¹⁷⁸ FCA, [Investment Platforms Market Study – Terms of Reference](#), July 2017.

Market investigation reference

285. The FCA made a market investigation reference to the CMA on investment consultancy and fiduciary management services. This was because it had reasonable grounds to suspect that features of this financial services market prevent, restrict or distort competition.¹⁷⁹ The FCA is continuing to support the CMA throughout the market investigation, which was launched by the CMA in September 2017 and is described in more detail in the CMA chapter.

Other market reviews

286. In addition to the market studies described above, the FCA has progressed the following reviews in the relevant period to ensure that markets are working well for consumers:

High Cost Credit review

287. In July 2017, the FCA published a feedback statement which includes its review of the effectiveness of the payday loan price cap as part of its review into high cost credit.¹⁸⁰

288. The review provided clear evidence that FCA regulation of high-cost short-term credit (also known as ‘payday lending’) has delivered substantial benefits to consumers. The review found that 760,000 borrowers in this market are saving a total of £150m per year, firms are much less likely to lend to customers who cannot afford to repay and debt charities are seeing far fewer clients with debt problems linked to high-cost short-term credit. The FCA therefore decided to leave the existing payday loan price cap in place and to review it again in 2020.

Retirement Outcomes review

289. In July 2017, the FCA published the interim findings of its Retirement Outcomes review.¹⁸¹ The report identified areas where early intervention may be needed to put the market in the best position for the future, following the introduction of pension reforms which have affected the retirement income

¹⁷⁹ FCA, [Final decision on Market Investment Reference](#), September 2017. The relevant features in this case were: (i) demand side with pension trustees relying heavily on investment consultants but having limited ability to assess the quality of their advice or compare services with resulting low switching rates; (ii) relatively high levels of concentration and relatively stable market shares with the largest three firms together holding between 50-80% market share; (iii) barriers to expansion restricting smaller, newer consultants from developing their business; and (iv) vertically integrated business models creating conflicts of interest.

¹⁸⁰ FCA, [FS17/2: High-cost credit and review of the high-cost short-term credit price cap](#), July 2017.

¹⁸¹ FCA, [Retirement Outcomes Review – Interim Report](#), July 2017.

market. The FCA's consultation on its interim findings and proposed remedies closed in September 2017. The FCA expects to publish the final report of the review in the third quarter 2018.

Strategic review of Retail Banking Business Models

290. In October 2017, the FCA published a 'Purpose and Scope' paper as part of its strategic review of Retail Banking Business Models.¹⁸² The FCA wants to understand how firms have reacted to certain changes in the retail banking market, the ways they are likely to respond to future pressures, how this will affect the development of retail banking business models and the potential implications for consumers. The strategic review will increase its understanding of the differences and similarities in business models used by retail banks, including the different drivers of profitability and the interdependencies within them (particularly in relation to personal current accounts (PCAs)). To underpin this understanding, the FCA has identified a series of hypotheses about how business models might be affected by these changes. The FCA's analysis will explore these in more depth. They cover the following:

- (a) the role and economics of PCAs and cross-selling;
- (b) the competitive advantage of large 'back books';
- (c) credit expansion and sub-prime lending;
- (d) the effect of technological change, greater intermediation and the future of branches in retail banking;
- (e) competition advantages and disadvantages of alternative business models; and
- (f) distributional issues for PCAs.

291. While these are the FCA's initial areas of focus, it may find additional areas of interest as its work progresses. The FCA expects to produce a project update in the second quarter of 2018.

Motor Finance review

¹⁸² FCA, [Strategic Review of Retail Banking Business Models: Purpose and Scope](#), October 2017.

292. In March 2018, the FCA published an update on its review of the motor finance sector.¹⁸³ The update outlined the FCA's main findings from its work to date, including that most of the growth in motor finance has been to lower credit risk consumers. It also stated that some types of commission arrangements provide incentives for brokers to arrange finance at higher interest rates for their customers. The FCA's ongoing review will focus on whether firms are properly assessing whether customers can afford the car they are being offered, how firms manage the risks around commission arrangements for dealers and whether consumers can make informed decisions. The FCA will set out its findings and plans to tackle any areas of concern by September 2018.

Effective Competition in Non-Workplace Pensions Discussion Paper

293. In February 2018, the FCA published a discussion paper in order to better understand the market for non-workplace pensions.¹⁸⁴ The FCA seeks to understand whether competition is working well in the market for non-workplace pensions and whether or not there is a need to go further to protect consumers. The FCA is looking to understand how the differences and similarities between the workplace and non-workplace markets impact competition and consumer outcomes. The FCA plans to publish a paper later in 2018 which will provide feedback on the themes arising from the responses to the discussion paper and data collection.

Decisions taken since April 2017 to use FCA's direct regulatory powers instead of competition prohibition powers

294. Under Schedule 4 of the Enterprise and Regulatory Reform Act 2013, the CMA is required to report on any decision taken by a sector regulator, in respect of a case in relation to which the regulator is satisfied that its functions under Part 1 of the Competition Act 1998 are exercisable, 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 2017, there have been no occasions on which the FCA has been satisfied that its functions under Part 1 of Competition Act 1998 are exercisable but has nevertheless decided that it is more appropriate for it to proceed by exercising functions other than its functions under Part 1 of the Competition Act 1998.

¹⁸³ FCA, [Our work on Motor Finance – update](#), March 2018

¹⁸⁴ FCA, [DP18/1: Effective competition in non-workplace pensions](#), February 2018.

295. The FCA has a duty¹⁸⁵ to consider, before exercising certain of its powers set out in FSMA,¹⁸⁶ whether it would be more appropriate to proceed under the Competition Act 1998.¹⁸⁷ Since April 2017, there have been no cases in which competition concerns arose such that the FCA needed to consider the matter further prior to exercising the relevant FSMA power.

Future work, and proposed changes to regulation, to improve competition and innovation

Business Plan

296. The FCA issues a Business Plan each year that sets out the activities that it intends to carry out in the financial year. The FCA Business Plan 2018/19 was published in April 2018.¹⁸⁸ It states that the FCA intends to launch a market study on credit information. The FCA will also continue work on pricing practices in retail general insurance, concluding its diagnostic work to gain a better understanding of retail general insurers' and intermediaries' pricing practices and how these affect household insurance customers. The FCA will also assess whether there is a need to act to ensure future insurance pricing practices support a market that works well for consumers.

Proposed changes to regulation and areas where changes to regulation might allow competition and innovation to work better

297. Effective regulation can help create a more competitive and innovative financial services markets. The FCA has already begun, and will continue, to identify specific areas where FCA regulation could inhibit competition.

Ongoing relevant regulatory initiatives include:

- (a) **Ring-fencing legislation** requires each large UK bank to separate its retail banking activity from the rest of its business. These reforms were proposed by the Independent Commission on Banking to promote financial stability and competition in the United Kingdom. In 2012, the government considered that applying ring-fencing to smaller banks may result in disproportionate costs and hinder competition.¹⁸⁹ The FCA is working with the Prudential Regulation Authority, the Bank of England,

¹⁸⁵ Under section 234K(1) of [FSMA](#); this is commonly known as the 'primacy obligation'.

¹⁸⁶ Specifically, prior to exercising powers under sections 55J (2), 55L, 88E, 89U, 192C and 196 [FSMA](#).

¹⁸⁷ Prior to exercising these FSMA powers, if competition concerns arise, the relevant division within the FCA will liaise with the FCA's Competition Division.

¹⁸⁸ FCA, [Business Plan 2018/19](#), April 2018.

¹⁸⁹ HM Treasury/Department for Business, Innovation and Skills, [Banking reform: delivering stability and supporting a sustainable economy](#), June 2012.

HMT and the larger UK banks to support the banks' implementation of the remedies. Certain banks have been making changes to implement ring-fencing by the deadline of 1 January 2019.

- (b) **The Insurance Distribution Directive (IDD)** is a wide-ranging piece of EU legislation which affects a large majority of firms in the insurance industry.¹⁹⁰ The FCA published its rules in near-final form in January 2018 in advance of the original application date of the directive, 23 February 2018. However, the European Commission subsequently proposed a delay to the application date of the IDD to 1 October 2018. HMT announced that the government will delay transposing the IDD into UK law until the outcome of this proposal has been confirmed. The FCA will make its final rules once the IDD is transposed into UK law. The IDD covers the initial authorisation, passporting arrangements and ongoing regulatory requirements for insurance and reinsurance intermediaries. It also covers the organisational and conduct of business requirements for insurance and reinsurance undertakings. Although the IDD builds upon the existing Insurance Mediation Directive¹⁹¹, it also contains a range of new requirements on product oversight and governance. It also contains enhanced conduct rules for insurance-based investment products with the aim of more closely aligning customer protections with those provided by the Markets in Financial Instruments Directive II (MIFID II) and of enhancing competition.

¹⁹⁰ [Directive 2016/97](#) of the European Parliament and of the Council of 20 January 2016 on insurance distribution

¹⁹¹ [Directive 2002/92/EC](#) of the European Parliament and of the Council of 9 December 2002 on insurance mediation

F.2 Payment Systems Regulator

298. The Payment Systems Regulator (PSR) is an independent economic regulator established under the Financial Services (Banking Reform) Act 2013 (FSBRA). It became fully operational on 1 April 2015. The PSR's objectives and regulatory powers relate to participants of those payment systems which are designated by HMT.
299. Payment systems are systems that enable funds to be transferred between people and institutions. Last year these payment systems processed around 29 billion transactions in the UK worth over £90 trillion.¹⁹² The regulated payment systems are the largest and most important payment systems which, if they were to fail or to be disrupted, would cause serious consequences for their users. The eight payment systems currently designated by HMT are: Bacs, CHAPS, Faster Payments Scheme (FPS), LINK, Cheque & Credit (C&C), Northern Ireland Cheque Clearing (NICC), Visa Europe and Mastercard.
300. The PSR has powers in relation to the regulated payment systems and all participants in those payment systems. Participants in payment systems include the operator that manages or operates that system, the payment service providers (PSPs) using that system, and the infrastructure providers to the payment system.
301. The PSR has three statutory objectives set out in FSBRA. When discharging its general functions under that legislation, the PSR must, so far as is reasonably possible, act in a way that advances one or more of these objectives which are:
- (a) to promote effective competition in the markets for payment systems and for services provided by those systems, including between operators, PSPs and also infrastructure providers, in the interests of people or businesses who use, or are likely to use, services provided by payment systems;
 - (b) to promote the development of and innovation in payment systems, in particular the infrastructure used to operate payment systems, in the interests of people or businesses who use, or are likely to use, services provided by payment systems, with a view to improving the quality, efficiency and economy of payment systems; and

¹⁹² Source: UK Finance Payments Statistics 2017

- (c) to ensure that payment systems are operated and developed in a way that considers and promotes the interests of people or businesses who use, or are likely to use, services provided by payment systems.
302. Additionally, the PSR has concurrent competition powers under the Enterprise Act 2002 and the Competition Act 1998. The PSR can therefore:
- (a) enforce against breaches of the UK and EU prohibitions on anti-competitive agreements and abuses of a dominant position; and
 - (b) conduct market studies and make market investigation references.
303. The above concurrent competition powers apply to anti-competitive agreements and conduct in relation to participation in all payment systems, not just those designated by HMT in respect of the PSR's direct regulatory powers.
304. The PSR also has functions under the following legislation:
- (a) The Interchange Fee Regulation (IFR)¹⁹³ – the PSR is the lead competent authority in the UK for monitoring and enforcing compliance with the IFR.
 - (b) Payment Accounts Regulations 2015 (PARs)¹⁹⁴ – the PSR is the competent authority responsible for designating alternative switching schemes, ensuring they continue to meet the requirements of designation and taking any enforcement action as appropriate.¹⁹⁵
 - (c) The Payment Services Regulations 2017 (PSRs 2017)¹⁹⁶ – the PSR is responsible for monitoring and enforcing compliance with the access provisions and ATM information requirements under the PSRs 2017, which came into force in the UK on 13 January 2018 and implement the revised Payment Services Directive (EU) 2015/2366 (PSD2) into UK law.

General developments since April 2017 from a competition or policy perspective

ATMs

¹⁹³ [Regulation \(EU\) 2015/751](#) of the European Parliament and the Council of 29 April 2015 on interchange fees for card-based payment transactions (L 123/1).

¹⁹⁴ Payment Accounts Regulations [SI 2015/2038](#).

¹⁹⁵ The FCA is the competent authority under Payment Accounts Directive [2014/92/EU](#) to ensure PSPs offer their customers a switching service between payment accounts denominated in the same currency.

¹⁹⁶ Payment Services Regulations 2017 [SI 2017/752](#).

305. The ATM sector is in the middle of a period of significant change. As consumers choose to make payments in different ways, some use cash less¹⁹⁷ while others continue to rely on it. Consumers value the ability to access cash through a widely spread geographic network of primarily free-to-use ATMs, and the PSR is committed to ensuring that the network continues to meet consumers' evolving needs.
306. The PSR's role includes ensuring that the payment systems that facilitate consumers accessing cash are operated in the interests of the evolving needs of people and businesses that use payment systems.
307. The PSR's primary focus in this area is to make sure that ATMs in the UK serve the needs of UK consumers. In the period covered by this report, the PSR undertook an extensive programme of work to gain a more detailed understanding of the ATM sector, so as to inform how best the PSR can work to protect the interests of consumers. The work included commissioning two independent studies, one of which looked at the potential for greater competition between schemes in the ATM market and what impact more competition might have.¹⁹⁸
308. The study was exploratory and forward looking in nature, providing useful insights into the prospects for, and potential impacts of, ATM scheme competition. It found that the conditions for competition between ATM schemes already existed. Both card issuers and ATM operators already have a choice between schemes. The study also found that, in the short term, more competition was likely to lead to lower system fees. This would mean lower costs for card issuers but also lower revenues for ATM operators and therefore a lower coverage of ATMs.
309. Given the reliance of some consumers on cash, the report recognises that there may be a need for more subsidies for certain ATMs which would otherwise be unviable, for example ATMs in geographically isolated areas.

Direct Debit Facilities Management

310. The PSR investigated concerns raised with it about direct debit facilities management services using the Bacs system. The providers of these facilities management services collect direct debit payments on behalf of their customers. The customers are typically small firms or other organisations (eg

¹⁹⁷ 2017 was the third consecutive year that cash represented less than 50% of payments made in the UK.

¹⁹⁸ Regulatory Economics, [Exploratory analysis of the prospects for, and potential impacts of, ATM scheme Competition](#), January 2018.

charities, local councils and government departments) that wish to collect money from their customers via direct debit but are unable to do so directly because they need to be sponsored by a bank or building society that is a Bacs member.

311. The key concern was that service providers could raise barriers that might prevent customers from switching to an alternative service provider. The PSR found that under the existing direct debit scheme rules, the scheme's process enabling the transfers of customers in bulk as opposed to individually (known as the bulk change process) could only proceed with the consent of the outgoing service provider. This effectively allowed outgoing service providers to increase the costs and disruption associated with switching by refusing to use the bulk change process to assist a switch. The PSR concluded that the existing rules relating to bulk change may harm competition, may prevent customers from switching service providers and are not in the service-users' interests.
312. The PSR decided in December 2017 to use its powers under section 54 FSBRA to direct the operator of Bacs to ensure that commercial facilities management service providers that wish to do so can use the Bacs bulk change process to help clients who wish to switch to/from another service provider. Bacs was also directed to develop a plan to address the concerns identified by the PSR for the PSR's approval.¹⁹⁹

The Payments Strategy Forum

313. The Payments Strategy Forum (the Forum) was set up as a representative group of industry experts (including PSPs and end user representatives) to identify, prioritise and help to deliver initiatives where it is necessary for the payments industry to promote collaborative innovation in the interests of service users. It published its strategy in November 2016.²⁰⁰
314. The Forum's strategy included proposals for a new payments architecture (NPA) to promote competition and innovation and for consolidation of the operators of three interbank payment systems (Bacs, FPS, and the new image clearing system for cheques) into a new payment system operator, the NPSO.
315. In July 2017, the CMA cleared the anticipated merger of the three interbank payment systems. The consolidation is intended to support increased choice

¹⁹⁹ PSR, [Direct Debit Facilities Management: Switching Providers](#), December 2017.

²⁰⁰ Payments Strategy Forum, [A Payments Strategy for the 21st Century](#).

of access as one party will be responsible for managing the different rule books.

316. In December 2017, the Forum published its final outputs, including the NPA blueprint which defines a new architecture for payments in the UK to meet existing and future needs of all users. The architecture will be underpinned by a single set of standards and rules, strong central governance and common international messaging standards. Implementation of the blueprint will create simpler access, more competition, greater innovation, and increased adaptability, as well as helping to reduce financial crime.
317. The NPSO corporate entity, which was established in July 2017, took responsibility in December 2017 for delivering aspects of the Forum's strategy and blueprint, including the development and delivery of the NPA. The PSR will monitor the NPSO's progress (see paragraph 364).
318. In January 2018, the PSR wrote to the NPSO setting out its expectations for the NPSO's work, including the design of the NPA.²⁰¹ The PSR wants to see the NPSO develop into an organisation that drives innovation and competition in retail payments, while maintaining its resilience, and that designs its approach to this around service-users' needs. The PSR's initial priorities for the NPSO include:
- (a) establishing a transparent decision making framework;
 - (b) ensuring that rules and standards are developed in a way that minimises barriers to entry; and
 - (c) ensuring that an effective approach to stakeholder engagement is developed and implemented.

The NPSO published its response to this letter in March 2018.²⁰²

Infrastructure market review

319. In June 2017, the PSR published its final decision²⁰³ on remedies following its market review into the ownership and competitiveness of central payment systems infrastructure provision.

²⁰¹ PSR, [NPSO open letter](#), January 2018.

²⁰² NPSO, [reply to PSR open letter](#), March 2018.

²⁰³ PSR, [Market review into the ownership and competitiveness of infrastructure provision – Remedies decision](#), June 2017.

320. This market review found there was no effective competition in the provision of central infrastructure services for Bacs, FPS and LINK. It also found that the joint control of the four largest shareholder PSPs over both the payment system operators and VocaLink was likely to reduce competition.
321. The PSR's final decision involved two remedies:
- (a) a requirement for Bacs, FPS and LINK to undertake a competitive procurement process for future central infrastructure contracts.
 - (b) a requirement for Bacs and FPS to adopt a common international messaging standard to make it easier for new entrants to compete for future central infrastructure contracts.
322. The purpose of these directions is to introduce competition in the market for central infrastructure for Bacs, FPS and LINK for the first time. The PSR is overseeing the implementation of these remedies.
323. The PSR recognised that the competitive procurement remedy should apply to any operators of the Bacs and FPS (and LINK) systems, not merely the current operator. This approach reflects the fact that the governance of Bacs, FPS and the new image clearing system for cheques was set to be consolidated into the NPSO, following the Payment Strategy Forum's proposal.
324. Given the Mastercard acquisition of VocaLink, the PSR did not impose the divestment remedy it had previously proposed. The PSR considered that the acquisition would be effective in addressing the competition problems it had identified.

Access and governance

325. In March 2018, the PSR published its third access and governance report which highlights progress made in the provision of access and sets out areas for on-going focus.²⁰⁴ The PSR considers that opening up access to more PSPs is essential to help create greater competition in payments, which can have a positive effect on the quality and range of services that consumers receive.

²⁰⁴ PSR, [Access and governance report on payment systems: update on progress](#), March 2018.

326. Each year, operators of payment systems report to the PSR on their compliance with the PSR's general directions on access and service-user representation.²⁰⁵
327. Since the PSR's last report in March 2017, the PSR has seen the following improvements in the provision of access to the interbank payment systems regulated under the PSR's General Direction 2 on access:
- (a) continued improvements in the choice of access options available to PSPs in terms of both direct and indirect access to payment systems;
 - (b) continued improvements to the processes for PSPs to join payment systems as direct participants, including a reduction in complexity resulting in lower costs; and
 - (c) an improvement in the quality and availability of technical access for PSPs who choose indirect access to payment systems.
328. These improvements have resulted in an increase in direct participation in the interbank payment systems in 2017 (a record year with seven new direct participants in the interbank systems), with further increases expected throughout 2018.
329. The PSR also expects the entry of new firms providing indirect access to payment systems to give a greater choice to PSPs in terms of the trade-off between quality and cost. This will enable indirect PSPs such as challenger banks to compete with established market leaders, while also catering for other cohorts of participants, such as building societies, whose needs are different to market leaders or challenger banks.
330. In 2017, two PSPs launched new access propositions: ClearBank launched a service providing indirect access to all the UK payment systems, and Starling Bank became an indirect access provider (IAP) for FPS and Bacs.
331. In addition, the first PSPs joined FPS and CHAPS through their models that enable direct access to PSPs with the use of the services of aggregators,²⁰⁶ and Bacs received more interest from PSPs wanting to use its new simplified access model. FPS has also developed its model for Directly Connected Non-Settling Participants which means that from 2018 Q1 PSPs can get direct technical access to FPS using an indirect access provider for settlement.

²⁰⁵ Outlined in detail in the CMA's [Annual report on concurrency 2016](#), paragraphs 214–217, April 2016.

²⁰⁶ Aggregators are organisations that provide technical access to a payment system's central infrastructure through a shared gateway. See paragraphs 3.13–3.18 in the [PSR access and governance report](#).

332. The PSR also sets out in its report how it expects operators and indirect access providers to build on the progress made in 2017 and to:
- (a) progress applications for direct access for non-bank PSPs and to have the first non-bank PSP as a direct participant in 2018; and
 - (b) for indirect access providers, to continue addressing any quality-related issues affecting PSPs who choose indirect access.

Sections 56 and 57 FSBRA

333. Until 13 January 2018, when the PSRs 2017 came into force, the PSR could use its powers under sections 56 and 57 FSBRA to:
- (a) require operators of certain regulated payment systems to provide direct access to a PSP or potential PSP (section 56);
 - (b) require a direct PSP in certain regulated payment systems acting as an indirect access provider to provide indirect access to an applicant for the purpose of enabling that person to become a PSP (section 56);
 - (c) vary the terms of an agreement between the operator of certain regulated payment systems and a direct PSP (section 57); and
 - (d) vary the terms of an agreement between an IAP in certain regulated payment systems and an indirect PSP (section 57).
334. Since January 2018, the PSR's powers under sections 56 and 57 FSBRA have been largely replaced by the PSRs 2017 (which implement PSD2 in the UK). The FSBRA powers now only apply in respect of: direct access to Bacs, FPS, C&C and NICC; indirect access to C&C and NICC; and any applications from credit unions (that are excluded from PSD2).
335. The PSR plans to publish its revised guidance on its powers under sections 56 and 57 FSBRA later this year.
336. The PSR's overall aim when exercising its section 56 and 57 powers is to continue to promote competition and innovation in payment systems markets for the benefit of people and businesses that use payment systems, while taking account of the commercial, operational, technical and financial risk factors of all parties involved.
337. Since the last report, the PSR closed its assessment of the formal application received under section 57 FSBRA in January 2017. The application involved a PSP asking the PSR to use its powers to vary the agreement it had with an IAP. The IAP had decided to terminate its access agreement with the PSP.

The PSP subsequently asked the PSR to extend the deadline for termination of its indirect access to payment systems while it transitioned to alternative access arrangements. Following commercial negotiations between the PSP and the IAP, the parties agreed to extend the PSP's access agreement and the PSP consequently withdrew its application to the PSR.

Payment Services Regulations 2017

338. The PSRs 2017²⁰⁷ replace the Payment Services Regulations 2009 (PSRs 2009) and impose access requirements requiring that PSPs' applications for access are treated in a proportionate, objective and non-discriminatory (POND) manner. The aim is to promote competition and encourage innovation by requiring that all access providers assess applications by PSPs for access to bank account services and to certain payment systems on their merits.
339. The PSR is responsible for monitoring and enforcing the following requirements in the PSRs 2017:
- (a) independent ATM providers must provide prescribed information on ATM withdrawal charges to consumers who withdraw cash from ATMs;
 - (b) payment system operators must make sure their access rules meet the POND criteria; and
 - (c) indirect access providers must treat requests from PSPs for access to payment systems operating in the UK in a POND manner;
 - (d) credit institutions must grant PSPs access to bank accounts on a POND basis.²⁰⁸
340. In September 2017, the PSR published its final guidance on its approach to monitoring and enforcing compliance with the provisions in the PSRs 2017 for which it is responsible.

General Directions Review

341. When the PSR launched in 2015, it put in place a number of general and specific directions for the payments industry using its powers under FSBRA. These directions were designed to help create the conditions where innovation and competition would thrive for the benefit of consumers. Three of

²⁰⁷ The PSRs 2017 came into force on 13 January 2018 and implement PSD2 into UK law.

²⁰⁸ The PSR is co-competent with the FCA for monitoring compliance with this requirement.

the directions (General Directions 2 and 3 and Specific Direction 1) focused on opening up direct and indirect access to payment systems by ensuring that access requirements are objective and risk-based (or otherwise in line with EU law on payment system access) and that operators publish information on their access options, including indirect access services.

342. The review is intended to ensure that the directions continue to advance the PSR's objectives and deliver good outcomes for people and businesses that use payment systems. The review also takes account of recent changes in the market and legislative developments such as PSD2.
343. The PSR published a consultation paper in March 2018. Once the PSR has considered the responses to the consultation, it will issue a policy statement and, if necessary, consult on revised legal instruments for directions that need to be revised significantly.

Monitoring of the Interchange Fee Regulation

344. The IFR caps the interchange fees paid by an acquirer (the merchant's bank) to an issuer (the cardholder's bank) most of the times when a consumer card is used to purchase goods or services. This measure was intended to reduce the cost for merchants to accept cards which should ultimately benefit consumers. It builds on competition investigations conducted by the European Commission and various National Competition Authorities into multilateral interchange fees which found that some of the industry's practices were anti-competitive.
345. In the period covered by this report, the PSR has continued to monitor compliance with the IFR caps, including the prohibition on circumvention of the caps.
346. The PSR is also monitoring regulated parties' compliance with the business rules imposed by the IFR. These rules are designed to promote competition in the payments industry, for example by improving the level of information merchants receive from their acquirer regarding the fees charged for each card transaction. There is also a requirement on card schemes to separate the activities of their processing entities from their card scheme activities, so as to encourage competition for processing services.
347. If the PSR finds a regulated person has failed to comply with an obligation imposed by the IFR, the PSR has the power to take enforcement action. This includes the power to publish details of a compliance failure or impose a financial penalty for the compliance failure and publish details of that penalty.

Payment Accounts Regulations

348. The PARs require PSPs to provide a switching service for payment accounts.
349. In September 2016, the PSR designated under PARs the Current Account Switching Service (CASS), which is operated by Bacs, as an alternative switching scheme to the PSPs' switching services. Since its launch in September 2013, over 3.5 million account switches have been made using the service.
350. In September 2017, following its annual assessment, the PSR published a statement confirming that CASS continues to meet the criteria for designated alternative switching schemes set out in the PARs.
351. The CMA's market investigation into retail banking also made a recommendation to HMT that CASS should be subject to 'regulatory oversight', including ongoing review and reporting on the performance of CASS, and annual or periodic agreement on CASS governance arrangements and strategic plans. Since the PSR is already responsible for monitoring CASS's compliance with the PARs, the PSR has taken on this monitoring and reporting role. As such, the PSR will assess and report annually to HMT on the progress CASS makes on a set of key performance indicators provided by HMT, including customer awareness and confidence metrics. The PSR issued its first report to HMT setting out CASS's progress in September 2017.

Changes to the legal/regulatory framework since April 2017, including any new regulations put in place during the year, which might significantly affect competition and innovation

The Payment Services Regulations 2017

352. The PSRs 2017 implemented PSD2 into UK law and came into force on 13 January 2018. PSD2 aims to encourage innovation in retail banking and payments through supporting access for new businesses, and principally financial technology companies or 'fintechs'.
353. PSD2 replaces the first Payment Services Directive adopted in 2007 (implemented in the UK by the PSRs 2009), which eased access for new market entrants and payment institutions, offering more competition and choice to consumers. The European Commission reviewed this directive to take account of new types of payment services, such as payment initiation services, that were previously unregulated. PSD2 is intended to help stimulate competition in the electronic payments market, by providing the necessary legal certainty for companies to enter or continue in the market. This should

enable consumers to benefit from more and better choices between different types of payment services and service providers.

354. Generally, the aims of PSD2 are consistent with the PSR's statutory objectives. In particular, the access provisions help to reinforce the approach taken by the PSR to date in terms of creating an environment in which small and new financial institutions have greater opportunities to obtain access to payment systems (see paragraphs 338 to 340 above for more detail). In addition to its specific role as a competent authority for the access provisions in PSD2 in the UK, the PSR will work with the FCA, industry and others to help realise all the benefits of PSD2 in the UK.

Cases under the competition prohibitions since April 2017

355. During the relevant period, the PSR opened its first Competition Act 1998 case. The PSR, working closely with the CMA, carried out inspections under warrant at several business premises throughout the UK. The ongoing investigation will be an important part of the PSR's antitrust work in 2018/2019.

Market studies undertaken since April 2017

356. There were no market studies under the Enterprise Act 2002 opened or closed in the period covered by this report and there are no market studies which are ongoing.

Decisions taken since April 2017 to use the PSR's direct regulatory powers instead of competition prohibition powers

357. Under Schedule 4 of the Enterprise and Regulatory Reform Act 2013, the CMA is required to report on any decision taken by a sectoral regulator, in respect of a case in relation to which the regulator is satisfied that its functions under Part 1 of Competition Act 1998 are exercisable, that it is more appropriate for it to proceed by exercising functions other than those that it has under Part 1 of Competition Act 1998. Since April 2017, there have been no occasions on which the PSR has been satisfied that its functions under Part 1 of Competition Act 1998 are exercisable but has nevertheless decided that it is more appropriate for it to proceed by exercising functions other than its Part 1 functions.

358. The PSR has a duty²⁰⁹ to consider, before exercising certain powers under sections 54 to 58 FSBRA,²¹⁰ whether it would be more appropriate to proceed under its competition powers.
359. In January 2018, the PSR exercised its powers under section 54 FSBRA following an investigation into concerns that some customers using direct debit facilities management services, which use the Bacs payment system, faced barriers when trying to switch to an alternative provider of those services (see paragraphs 310 to 312 above for more detail).
360. In deciding whether to exercise its section 54 FSBRA powers, the PSR considered whether it would be more appropriate to proceed under Competition Act 1998. However, it determined that the issues identified and which affected competition could be most comprehensively, efficiently and expediently addressed by a change to the Bacs system rules.

Future work, and proposed changes to regulation, to improve competition and innovation

Work on data

361. The PSR recognises that data is becoming more important as its availability and commercial use increases and this importance will be amplified by new initiatives and new players entering the market. The PSR has therefore undertaken work to understand the impact of data associated with payments on the payments industry and consumers. The PSR plans to publish the findings of this work in summer 2018, including how data is currently collected and used to generate opportunities which could be of benefit to users of payment systems services and the data related issues which could affect the extent to which competition, innovation and end-user benefits are delivered within the industry.
362. The PSR plans to consult on its findings to gather stakeholders' views and opinions. The PSR will also engage with other regulators to discuss potential policy implications of data use on competition and end-user interests.

The new payments architecture

²⁰⁹ Under section 62 of FSBRA; this is commonly known as the 'primacy obligation'.

²¹⁰ Excluding its power to give general directions (sections 54(3)(a) and (b) FSBRA) and the power to impose a generally-imposed requirement (sections 55(3)(a) and (b) FSBRA).

363. The NPSO is responsible for managing the development and delivery of the NPA alongside running the existing systems, and managing a smooth transition to the NPA (see paragraphs 313 to 318).
364. As the NPSO advances this work, the PSR will be closely monitoring developments to make sure they are in line with its statutory objectives. In 2018, this includes the NPSO's preparation to competitively procure the central infrastructure for the NPA, developing the rules and standards for the NPA, and engaging with stakeholders to further develop plans for migration to the NPA.

Work on cards

365. Building on what the PSR has learnt from engaging with stakeholders and monitoring regulated parties' compliance with the IFR, the PSR plans to explore wider issues relating to the way that the cards market works. This work will give the PSR a more detailed understanding of these issues and enable the PSR to determine whether any action is needed to address them.
366. Further information on the PSR's activities for 2018 can be found in its Annual Plan for 2018/19.²¹¹

²¹¹ PSR, [Payment Systems Regulator Limited Annual plan and budget 2018/2019](#), March 2018.

G. Healthcare services in England – NHS Improvement

367. NHS Improvement (NHSI)²¹² is responsible for overseeing foundation trusts and NHS trusts, as well as independent providers that provide NHS-funded care. It offers the support these providers need to give patients consistently safe, high quality, compassionate care within local health systems that are financially sustainable. By holding providers to account and, where necessary, intervening, it helps the NHS to meet its short-term challenges and secure its future.

General developments since April 2017 from a competition or policy perspective

368. NHS Improvement has continued to work closely with the CMA to support its assessment of NHS mergers. This has included on-going work over the year to help the CMA prioritise which NHS mergers should be reviewed, as well as the provision of advice on expected patient benefits which proved key to the CMA clearing three NHS mergers over the period.

Changes to the legal/regulatory framework since April 2017, including any new regulations put in place during the year, which might significantly affect competition and innovation

369. There have been no changes to the legal/regulatory framework which might significantly affect competition and innovation.

Cases under the competition prohibitions since April 2017

370. There were no cases under the EU or UK competition prohibitions opened or closed by NHS Improvement in the year from April 2017.
371. There are currently no ongoing investigations under the competition prohibitions by NHS Improvement.

Market studies undertaken since April 2017

372. There were no market studies under the Enterprise Act 2002 opened or closed since April 2017 and no market studies which are ongoing.

²¹² Since 1 April 2016, Monitor and the NHS Trust Development Authority have been operating as a single integrated organisation known as NHS Improvement.

Decisions taken since April 2017 to use NHSI's direct regulatory powers instead of competition prohibition powers

373. Under Schedule 4 of Enterprise and Regulatory Reform Act 2013, the CMA is required to report on any decision taken by a sectoral regulator, in respect of a case in relation to which the regulator is satisfied that its functions under Part 1 of Competition Act 1998 are exercisable, that it is more appropriate for it to proceed by exercising functions other than those that it has under Part 1 of Competition Act 1998. Since April 2017, there have been no occasions on which NHSI has been satisfied that its functions under Part 1 of Competition Act 1998 are exercisable but has decided nevertheless that it is more appropriate for it to proceed by exercising functions other than its Part 1 functions.

Future work, and proposed changes to regulation, to improve competition and innovation

374. In the short term, the financial and operational challenges across the sector mean NHSI will continue to take a more involved and direct approach with providers than it intends to in the future. As the sector comes back into balance, it will adopt a longer-term oversight model with more and more providers.
375. NHSI continues to support the development and implementation of sustainability and transformation plans produced in communities across England, which set out the wider shared action they must take together to achieve broader improvement in health, care and financial sustainability.
376. Improvement capability and capacity need to be successfully embedded, valued and supported in all provider organisations. With the development of an expert improvement faculty, NHSI will continue to support providers and existing improvement agencies to develop leaders, and support trusts to develop the capabilities to improve and apply evidence-based improvement methodologies.

H. Railway services – Office of Rail and Road

377. The Office of Rail and Road (ORR) is the independent safety and economic regulator of railways in Great Britain. It acquired functions in January 2017 to regulate access, management and licensing requirements for Northern Ireland's railways following the implementation of European Directives. ORR is also the monitor of the strategic roads network in England.
378. ORR has powers to enforce the competition prohibitions in the Competition Act 1998, in relation to the supply of services relating to railways. Where conduct has an effect on trade between member states ORR is able to apply Articles 101 and 102 of the Treaty on the Functioning of the EU. ORR also has powers to carry out market studies and make market investigation references to the CMA under the Enterprise Act 2002, in relation to the supply of services relating to railways. In addition, pursuant to section 69 of the Railways Act 1993, ORR has a responsibility to keep the provision of railways services under review.

General developments since April 2017 from a competition or policy perspective

Periodic Review 18 (PR18)

379. ORR is currently involved in its periodic review of Network Rail. Periodic reviews are one of the principal mechanisms by which ORR holds Network Rail to account, and secures value for money for users and funders of the railway. Following a number of earlier consultations and reviews, ORR published two consultations in July 2017²¹³ regarding changes in how ORR proposes to regulate and monitor Network Rail for the next control period (CP6), which is expected to run from 1 April 2019 to 31 March 2024. The aim of these proposals is to place greater focus on route-level regulation and improve the performance of the system operator's (SO) functions:
- (a) The move to 'route-level regulation' is a form of comparative competition. The approach builds on Network Rail's transformation to devolve more responsibility to its routes (the business units responsible for the day-to-day operation of the railway). ORR will determine a separate regulatory 'settlement' for each route, albeit delivering one final determination for Network Rail as a single company. During CP6, ORR will make and publish comparisons between routes, to use the sense of rivalry and

²¹³ ORR, [Consultation on the Overall framework for regulating Network Rail](#), July 2017 and ORR, [Consultation on possible measures of the System Operator's performance](#), July 2017

competition to drive improvements, to allow routes' customers to better hold the routes to account, and to inform ORR's approach to intervening and enforcing where necessary.

- (b) System operation is about the set of activities and decisions relating to use of this network and its expansion over time. It typically relates to functions where coordination and/or the fair treatment of customers are particularly important. The SO business unit within Network Rail plays a key role, for example in developing plans for how the network should develop over the next 30 years (or so) and in producing timetables. As demand for the network increases, there will be a greater need to make effective use of the existing network, meaning the role of the SO is likely to become even more important. For CP6, the SO will also receive a separate regulatory settlement (within the overall final determination) and be required to report on its performance – and the system capabilities – to its customers and to ORR. This should support industry decision-making about use of the network and possible ways to improve it, including around possible new entry to the market.

380. In September 2017, ORR consulted on its approach to recovering fixed costs in CP6, including a proposal to recover fixed costs from open access services, subject to a 'market can bear' test.²¹⁴ Open access services do not currently contribute to fixed network costs. One of the aims of the ORR infrastructure cost charging proposals is to promote greater on-rail competition by allowing open access operators (OAOs) to play a larger role in the rail industry, complementing the franchising system.

Access

381. ORR has sector specific powers in relation to access to facilities (including tracks, stations and light maintenance depots).

Open access

382. Train Operating Companies (TOCs) who wish to run passenger train services will either apply for a franchise or operate as an OAO. Franchisee passenger TOCs face a degree of competition *in* the market from OAOs.

383. Under the Railways Act 1993, a person (usually a TOC) may only enter into a contract with a facility owner (such as Network Rail) for the use of that facility

²¹⁴ This test is required by the European framework and involves identifying a number of different market segments and then assessing the extent to which each segment can bear infrastructure cost charges.

following ORR's approval or direction. ORR approves proposed contracts²¹⁵ and amendments to contracts,²¹⁶ and gives determinations where parties are unable to agree the terms of a contract.²¹⁷

384. In deciding whether to approve or direct new or changed access rights, ORR seeks to ensure a fair and efficient allocation of network capacity. Where a passenger operator seeks to introduce a new open access service that will compete with existing franchised services, ORR looks at the extent to which the additional services would benefit passengers and not be primarily abstractive of incumbents' revenues. ORR assesses this using the Not Primarily Abstractive test (NPA Test)²¹⁸ alongside a wider competition analysis.
385. ORR has used these powers to consider applications for access to the network by OAOs whose services may compete with franchised passenger services. ORR has reached the following decisions when considering open access applications:²¹⁹
- (a) In March 2017, ORR approved an application made by Grand Central to call at Low Moor station;²²⁰
 - (b) In December 2017, ORR approved an application from Hull Trains for the extension of an additional weekend service between Kings Cross and Hull;
 - (c) In November 2017, ORR rejected an application from Grand Central for additional early and late weekday services between Kings Cross and Wakefield; and
 - (d) During the year, Go-op withdrew its application for services between Taunton and Nuneaton, while it continued discussions with Network Rail.

²¹⁵ Section 18, [Railways Act 1993](#)

²¹⁶ Section 22, [Railways Act 1993](#)

²¹⁷ Section 17 of the [Railways Act 1993](#) (proposed contracts), and Section 22A of the [Railways Act 1993](#) (amendments to contracts)

²¹⁸ ORR's 'not primarily abstractive' test, commonly known as the 'NPA Test', usually requires that a new OAO generates 30p of new revenue for every £1 it abstracts from the incumbent operators operating on the same routes. See ORR, [Criteria and procedures for the approval of track access contracts](#).

²¹⁹ See ORR, [Track access decisions](#).

²²⁰ Although this is outside of the reporting period, it is included as it was not reported on in the last concurrency report.

386. ORR is currently considering proposals from Alliance Rail to operate new services between Waterloo and Southampton and between London Euston and Blackpool.

Access to facilities or services

387. The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 ('2016 Regulations')²²¹ which transpose EU rail directives, provide for appeals to ORR where an applicant considers it has been wrongly denied access to a facility or service, or where the terms for obtaining access are unreasonable or discriminatory. ORR has used these powers to hear appeals regarding access to facilities otherwise exempt from its powers under the Railways Act 1993.
388. In April 2016, ORR received an appeal from Transport for London (TfL) under the 2005 Regulations regarding access to the Heathrow Rail Infrastructure for the operation of Crossrail services to the airport.²²² This was later re-submitted by TfL when the 2016 Regulations replaced the Access and Management Regulations 2005. Since that time ORR has been working through the issues with TfL and Heathrow Airport Limited through tri-partite discussions. In November 2017, TfL submitted a final list of unresolved appeal points and asked ORR to determine those points. ORR is currently seeking final views and clarifications from Heathrow Airport Limited and TfL and will make a determination on the issues in spring 2018.

Policy decisions

389. In March 2017, ORR consulted on a proposal to end ORR's role as an Entities in Charge of Maintenance (ECM)²²³ certification body. ORR has acted as a certification body free of charge to the industry since 2012 when the requirement was introduced under EU legislation.²²⁴ ORR made the proposal to end its role after considering the impact that this would have on the markets for both accredited certification bodies and ECMs themselves. ORR thought

²²¹ These regulations replaced the [Railways Infrastructure \(Access and Management\) Regulations 2005](#) ('2005 Regulations')

²²² See ORR, [Transport for London appeal under regulation 29 and complaint under regulation 30 of the Railways Infrastructure \(Access and Management\) Regulations](#).

²²³ Under the [Railways and Other Guided Transport Systems \(Safety\) Regulations 2006](#), an ECM is:

- anyone responsible for the safe maintenance of a vehicle; and
- registered as the ECM in the national vehicle register

ECMs can be individuals or organisations, including transport undertakings, infrastructure managers, keepers or maintenance organisations.

²²⁴ [Commission Regulation \(EU\) 445/2011](#).

that following ORR's departure there would be a viable market for accredited certification bodies. A competitive environment could drive differences in approaches in terms of efficiency and innovation. Following the consultation, and taking into account the views of stakeholders, in July 2017, ORR made the decision to end its role as an ECM certification body with effect from 31 May 2018.²²⁵

Internal awareness of competition

390. ORR continued its structured programme to raise internal awareness of competition across the organisation. This programme has included online training, talks and seminars. In October 2017, ORR ran a seminar on “*Barriers to Entry*” with speakers from the PSR and Ofwat. In November 2017, ORR invited the CMA to present on its competition impact assessment guidance and invited other regulators to take part in this event.
391. The ORR's internal Competition Network,²²⁶ set up in September 2016, continued to meet quarterly to discuss the competition pipeline and potential competition issues identified across ORR.

Information exchange

392. ORR and the CMA have continued to exchange information pursuant to Regulation 9 of the Concurrency Regulations during the period of this Report. ORR met the CMA's Sector Regulation Unit regularly to support mutual understanding of developments in economic and competition policy. The CMA and ORR have also met regularly at all levels, bilaterally and through the UKCN.
393. ORR has also provided advice and assistance to the CMA, namely:
- (a) During November 2017, ORR provided advice to the CMA's Mergers Intelligence Committee on the possible competitive impacts of Wabtec's acquisition of Axiom Rail's bogie business. This advice drew on data available to ORR via its market intelligence function and also the advice of ORR's operations experts; and
 - (b) In December 2017, ORR responded to the CMA's consultation on the rail (franchise) mergers guidance (see paragraph 403 below)

²²⁵ See ORR, [Review of ORR's certification body function for entities in charge of maintenance of freight wagons – Conclusions](#).

²²⁶ The Competition Network includes representatives from across ORR's functions: Economics, Legal Services, Strategy and Policy, Consumer Policy, Access, European, Rail Safety, Railways Planning and Performance, Highways Monitor, and External Affairs teams.

Changes to the legal/regulatory framework since April 2017, including any new regulations put in place during the year, which might significantly affect competition and innovation

European Union law

394. A significant amount of the UK's rail legislation is the result of EU law. The EU's ambition is to create a single, efficient and competitive market for rail throughout Europe by opening rail markets, promoting competition, tackling barriers to market entry and harmonising technical specifications, safety standards and certification. The new regulations described below, therefore, all have a positive impact on competition. ORR has not identified any new regulations which have a negative impact on competition.
395. The European Commission has put forward various 'packages' of rail legislation, three of which have been implemented in the UK.²²⁷

4th Railway package

396. The 4th railway package was finalised in December 2016, and is intended as the next step towards the creation of a single European rail market. The package covers infrastructure governance and funding and the competitive tendering of all rail public service obligation contracts ('the market pillar') alongside new processes for safety certification and technical authorisations ('the technical pillar').
397. The UK's existing market structure and franchising regime will not require any major changes to implement the market pillar domestically. The Department for Transport will consult on details of the implementation and ORR will assist with the drafting of any necessary statutory instruments.
398. ORR is working closely with the Department for Transport, the European Commission and other European regulatory bodies on the negotiation of secondary legislation. This includes an implementing act for an 'economic equilibrium test', which will help to reconcile the interests of open access operators and franchised services, to be submitted to Parliament in 2018.
399. ORR is working closely with other EU rail safety authorities and the European Rail Agency to help ensure that the new legislative framework for safety certification and technical authorisation (ie the technical pillar) is clear,

²²⁷ The first was implemented in 2005, the second was implemented in 2006 and the third was implemented in 2009. For further information, please see ORR, [EU law](#).

proportionate, and does not present any unjustified regulatory burdens for market entrants.

Channel Tunnel regulation

400. Following implementation of the Recast Directive²²⁸ in Great Britain and France, the economic functions of the regulatory body under EU law in respect of the Channel Tunnel have been transferred from the Intergovernmental Commission²²⁹ to ORR and the Autorité de régulation des activités ferroviaires et routières (ARAFER), the respective regulatory bodies in the UK and France.
401. ORR continues to collaborate closely with ARAFER on the economic regulation of the Channel Tunnel. In February 2017, ORR and ARAFER issued their joint opinion on Eurotunnel's Annual Network Statement for 2018. This is the second joint opinion issued by the regulators.
402. The work carried out by ARAFER and ORR is expected to support competition because it aims to: ensure that the conditions for train passenger and freight operators are transparent between Great Britain and France; and promote entry to the market, with a particular focus on developing cross tunnel traffic.

Guidance for the evaluation of competition issues in rail franchise awards

403. In December 2017, ORR responded to the CMA consultation on its guidance for the evaluation of competition issues in rail franchise awards. ORR welcomed the CMA's encouragement of close engagement with franchisees and its greater understanding and use of standard rail industry demand forecasting techniques when modelling its market and competition analysis. ORR highlighted a number of factors that it considers the CMA should take into account when evaluating rail franchise mergers. ORR also signalled its continued interest in this area and a desire to continue to work closely with the CMA in its franchise review process.

²²⁸ On 17 September 2010 the European Commission adopted a draft proposal to amend the First Railway Package directives. The [Recast \(Directive 2012/34/EU\)](#) was finalised in November 2012, and has been implemented by the [Railways \(Access, Management and Licensing of Railway Undertakings\) Regulations 2016](#) in the UK.

²²⁹ The body established under article 10 of the [Treaty of Canterbury](#) between the United Kingdom of Great Britain and Northern Ireland and the French Republic.

Cases under the competition prohibitions since April 2017

Rail Freight

404. In December 2015, ORR accepted commitments offered by Freightliner following an investigation into a suspected abuse of a dominant position in relation to its arrangements with its customers for the provision of deep sea container rail transport services between certain ports and key inland destinations in Great Britain.²³⁰ Under the commitments, Freightliner is obliged to submit an annual compliance statement to ORR and a quarterly report providing data on the volumes of containers carried by Freightliner in that quarter under contracts with a duration of more than one year. In May 2017, ORR reviewed the first full year's worth of data. At that early stage, ORR was not able to judge whether the commitments were having the desired effect in the market. ORR will review the second year's data in May 2018.

Market studies undertaken since April 2017

Market study into the supply of automatic ticket gates and ticket vending machines

405. In March 2018, ORR launched a market study under the Enterprise Act 2002 into the supply of automatic ticket gates (ATG) and ticket vending machines (TVM). This study followed a market review into the supply of ticketing equipment and systems which identified the following preliminary concerns:

- (a) The supply chains for the supply of TVMs and ATGs have few suppliers and limited new entry or churn.
- (b) There may be a number of barriers which make it difficult for new businesses or products to enter the market for the supply of TVMs and ATGs.
- (c) A lack of effective competition in these markets may be resulting in consumer detriment in the form of higher prices, lower quality and stifled innovation.
- (d) The primary causes of the high concentration and lack of effective competition appear to be:
 - (ii) Purchasing decisions to award long-term contracts with highly aggregated service packages. ORR has preliminary concerns that only large suppliers are capable of bidding for these contracts and,

²³⁰ See ORR, [Freightliner commitments investigation](#).

once they are awarded, the successful companies may obtain market power, with wider impacts for the Great Britain market; and

- (iii) The complexity of the accreditation process for bringing new retailing products/services to market.

406. In light of these concerns, the market study will focus on:

- (a) Concentration and market shares in the ATG and TVM markets;
- (b) Outcomes for customers, both the immediate customers of these products such as Transport for London, train operators, Network Rail, and, passengers; and
- (c) Drivers for market outcomes.

407. An interim report with ORR's initial findings and views on potential remedies will be produced by September 2018 with a final report due to be published by February 2019.

Retail market review

408. ORR has undertaken work on other market reviews with a competition focus.

409. For example, in February 2018, ORR met the Rail Delivery Group²³¹ asking for an update on progress with certain recommendations from its retail market review²³² in light of stakeholder feedback. ORR specifically highlighted recommendations aimed at improving the ability of all retailers to compete to sell tickets, and third party retailers' access to discounted fares.

Decisions taken since April 2017 to use ORR's direct regulatory powers instead of competition prohibition powers

410. Under Schedule 4 of Enterprise and Regulatory Reform Act 2013, the CMA is required to report on any decision taken by a sector regulator, in respect of a case in relation to which the regulator is satisfied that its functions under Part 1 of Competition Act 1998 are exercisable, that it is more appropriate for it to proceed by exercising functions other than those that it has under Part 1 of Competition Act 1998. Since April 2017, there have been no occasions on

²³¹ Rail Delivery Group is a collective which represents the interests of train operating companies.

²³² The review concluded in October 2016, setting out a number of recommendations and actions for industry, including proposed improvements to TOCs governance arrangements, retailer's access to fares, and incentives to invest in innovative products.

which ORR has been satisfied that its functions under Part 1 of Competition Act 1998 are exercisable but has nevertheless decided that it is more appropriate for it to proceed by exercising functions other than its Part 1 functions.

411. The ORR also has a duty²³³ to consider, before exercising its powers under certain sector-specific legislation, whether it would be more appropriate to proceed under competition powers.²³⁴ Since April 2017, there have been no cases in which competition concerns arose such that ORR needed to consider the matter further prior to exercising its relevant regulatory power.

Future work, and proposed changes to regulation, to improve competition and innovation

Periodic review 2018

412. ORR will continue to promote and protect competition across the range of its functions on the PR18 work streams. The current timetable envisages that in June 2018, the ORR will consult on its draft determination which will be finalised in October 2018. As set out above, the proposed changes in PR18 are designed to facilitate greater on-rail competition and encourage greater rivalry and comparative competition between Network Rail's routes.

Open access

413. As part of PR18, ORR is reforming the framework for charges and access for passenger TOCs. These changes should facilitate OAOs' access to the market and create a more level playing field between OAOs and franchised TOCs. To ensure this, ORR will focus on reviewing not just infrastructure charges paid by OAOs but also associated policies in relation to access to the network more generally, for example, reviewing the NPA Test,²³⁵ and the introduction of changes to the European economic equilibrium test to ensure it does not overly restrict access to the market for OAOs.

²³³ Under sections 55 and 57A of the [Railways Act 1993](#); this is commonly known as the 'primacy obligation'. The primacy obligation requires ORR to consider whether it would be more appropriate to proceed under CA98 before deciding to make a final order or confirming a provisional order for the purpose of securing compliance with a licence condition or requirement. It also requires ORR to consider whether it would be more appropriate to proceed under CA98 before imposing a penalty for a contravention of a licence condition or requirement or an order.

²³⁴ As noted in last year's report, ORR has published [prioritisation criteria](#) which apply to the use of all its enforcement tools. The criteria are designed to ensure ORR intervenes where the impact will be most effective taking into account the deterrent effect and where the outcome will secure value for money from the railway, for users and funders.

²³⁵ See paragraph 384 above.

414. ORR also intends to engage closely with OAOs to identify issues that are facing them, in particular, anti-competitive responses to open access operations that go beyond the bounds of normal competition.

Network Rail Strategic Business Plans

415. ORR will be reviewing Network Rail's strategic business plans to scrutinise Network Rail's strategy to manage its supply chain. The aim is to ensure that Network Rail's strategy creates and maintains a healthy level of competition in the supply chain.

I. Water and sewerage services in England and Wales – Water Services Regulation Authority

416. The Water Services Regulation Authority (Ofwat) is the independent economic regulator for water and wastewater services in England and Wales. Ofwat's primary duties are set out in the Water Industry Act 1991 (WIA91). One of these duties is to further the consumer objective to protect the interests of consumers, wherever appropriate by promoting effective competition between persons engaged in, or in commercial activities connected with, the provision of water and wastewater services.
417. To achieve this, Ofwat has direct regulatory powers to introduce and enforce conditions in each regulated company's licence. Ofwat also has concurrent powers alongside the CMA to apply and enforce competition law.²³⁶
418. Until this year, competition in water and wastewater services has been relatively limited in England and Wales. The wholesale delivery of water and wastewater services to customers is split between a series of regional statutory monopoly providers, each with an appointed area of exclusivity given to the water and/or wastewater company as an "undertaker" by the WIA91.²³⁷ However, a number of developments are underway to introduce markets at different points in the sector's value chain, as detailed below.

General developments since April 2017 from a competition or policy perspective

Business retail market opening

419. A series of steps have been taken to introduce retail competition into the water sector. The Water Act 2003 introduced a degree of competition via the Water Supply Licensing (WSL) framework. Under the WSL arrangements, since December 2005 business customers²³⁸ in England and Wales that used over 50 million litres of water a year have been able to choose their water retailer. In 2011, secondary legislation reduced the usage threshold to 5 million litres of water a year for appointed companies operating wholly or mainly in England.

²³⁶ Section 31 [Water Industry Act 1991](#).

²³⁷ There is limited competition in wholesale services in the form of New Appointments and Variations (NAV) but this is relatively small scale. A NAV is a licence holder that replaces the existing monopoly provider for water and/or wastewater services for a defined geographical area. Applicants can apply to Ofwat for a NAV.

²³⁸ Business customers include business, charity and public sector customers.

420. The Water Act 2014 (WA14) subsequently removed the threshold, so that since April 2017 all business customers served by companies operating wholly or mainly in England can choose their water retailer. These customers can also choose a retailer for their wastewater services. The Welsh government has chosen to retain the scope of the WSL arrangements for appointed companies operating wholly or mainly in Wales. Customers of those companies are therefore still subject to the 50 million litres threshold requirement to be able to choose a water retailer.
421. Companies seeking to operate as retailers need to apply for and be granted a Water Supply and/or Sewerage Licence (WSSL) by Ofwat. In addition incumbent water and wastewater companies can continue to provide retail services unless they have exited the market.²³⁹ The WSSL licensing regime also allows customers to apply for a self-supply licence, whereby the customer acts as its own retailer and interacts directly with its wholesaler(s).²⁴⁰
422. As of 31 March 2018, Ofwat had granted a total of 58 WSSLs to 30 retailers.²⁴¹ At market opening, 13 incumbent companies had chosen to exit the retail market, transferring their customers to licensed retailers on 1 April 2017. As a result, on 31 March 2018 the business retail market comprised:
- 13 non-exited incumbent water and wastewater companies, including eight small water and wastewater undertakers (NAVs);²⁴²
 - 16 associated retailers (ie a retailer within the same group of companies as the incumbent wholesaler);
 - Two third party retailers who purchased the existing customer base from the incumbent water company as a result of retail exit but are not part of the same group of companies;
 - Nine new entrants,²⁴³ including companies already operating in sectors such as energy and telecoms; and

²³⁹ This is permitted under [The Water and Sewerage Undertakers \(Exit from Non-Household Retail Market\) Regulations 2016](#)

²⁴⁰ A self-supply licence includes a special condition which states that the licensee cannot use its licence to supply customers other than itself and its associated persons.

²⁴¹ Most retailers have applied for and been granted both a water and a sewerage supply licence. Details of all licence holders can be found on Ofwat's website: [Licences and licensees](#).

²⁴² See footnote 237 above.

²⁴³ New entrants are classed as those companies that are not: non-exited water companies; associated retailers or acquiring third party retailers who have purchased the existing customer base from the original water company during the Retail Exit process.

- Four self-supply licensees.
423. Interest in becoming a retailer has continued since market opening and Ofwat expects to receive further applications, in particular for self-supply licences. The market has also already seen some consolidation, with a number of joint ventures between retailers and the acquisition of one retailer. Further consolidation is expected as the market develops.
424. Customers' engagement in the business retail market has been encouraging, with 112,155 supply points having switched retailer by March 2018, equivalent to 4.7% of the markets supply points.²⁴⁴ Around 48% of customers are aware of the opening of the market,²⁴⁵ a 16% increase since pre-market opening. Ofwat's Customer Insight Survey has found that larger organisations are more likely to be aware of, and engage with, the market than smaller ones.
425. As noted in the Introduction, Ofwat expects to see digital comparison tools (which would include third party intermediaries (TPIs)), emerge and play a significant role in the water market. These are an important source of engagement for customers. Around three quarters of all customers aware of market opening are also aware that TPIs can help them compare offers. Furthermore, around two thirds of customers who have been active in the market (eg switched or plan to switch) used a price comparison website or other TPI to search for information about alternative retailers. We expect that TPIs will continue to play an important role in driving customer awareness and engagement.
426. Early indications are that competition is developing, with new entrant retailers challenging incumbent retailers through both price and value added service offers, and gaining 20% of all supply points switched.
427. However, Ofwat has identified some potential market issues that may warrant closer scrutiny. These include retailer difficulties in offering transparent prices and, in turn, the ability of customers to search and compare offers. In addition, poor data quality and instances of some wholesalers and retailers not meeting required market performance standards may result in less effective market functioning.²⁴⁶

²⁴⁴ There are approximately 2,600,000 supply points. Further information can be found on the market operator's [website](#) (MOSL).

²⁴⁵ These figures are taken from the results of Ofwat's Customer Insight Survey, undertaken between late September – early November 2017.

²⁴⁶ Ofwat classifies wholesaler performance in terms of the services wholesalers provide to retailers to ensure the efficient running of the retail market, such as new connections and disconnections, and meter readings.

428. Ofwat has worked with stakeholders to develop a robust monitoring framework.²⁴⁷ This will enable Ofwat and its stakeholders to understand whether the market is working well, and if and when intervention may be needed to make the market operate more effectively and/or to protect customers.
429. The monitoring framework will assess how well competition is delivering for customers overall and for subsets of customers (eg by customer size). Indicators of customer outcomes include prices, quality of service, availability of better or new services and wider benefits such as environmental improvements. In considering how competition has developed, Ofwat will assess the extent to which retailers have entered the market and are competing for new business. Ofwat will also assess the ability and appetite of customers to participate in the market and benefit from better prices and services. It will also consider whether and why some customers or customer groups face difficulties in participating. Ofwat, MOSL,²⁴⁸ and the Consumer Council for Water will all regularly publish information about the market. Ofwat will publish a detailed annual 'state of the market' report (see below).

Competition in new connections

430. The provision of new connections infrastructure in the water sector, such as new water mains or public sewers, is open to competition (and has been since privatisation), with suitably qualified organisations (self-lay providers or SLPs²⁴⁹) able to compete with appointed companies and NAVs²⁵⁰ to provide the physical infrastructure for new developments. In providing new connections to the water and/or sewerage network for both household and non-household purposes, competitors rely, to a degree, on non-contestable services²⁵¹ that only the incumbent water or waste water company can provide.
431. The WA14 includes a new requirement for Ofwat to issue statutory codes about the agreements water and wastewater companies enter into in order to

²⁴⁷ Ofwat, [market monitoring](#).

²⁴⁸ The Market Operator.

²⁴⁹ Self-lay providers are accredited bodies qualified to compete with appointed water companies that provide new water infrastructure. The appointed water company enters into a statutory agreement under the WIA91 to take on responsibility for the new infrastructure ("adoption") to provide waters services.

²⁵⁰ See footnote 237 above.

²⁵¹ The specific new connections services that are considered contestable and non-contestable are not defined in legislation. The '[Code of Practice for the Self-Laying of Water Mains and Services – England and Wales](#)' sets out the current working practice in the sector. Non-contestable services could include off-site work to provide additional capacity or water sampling.

take on responsibility for new connections infrastructure that has been provided by other parties, such as SLPs (adoption agreements). This requirement came into effect in October 2017. Ahead of that, Ofwat published a discussion paper²⁵² and a statutory consultation²⁵³ to seek stakeholders' views on the content and nature of the codes to ensure the codes help improve customer service and enable effective competition in the new connections market.

432. Ofwat published its Code for Adoption Agreements in November 2017.²⁵⁴ The Code sets a framework within which companies must deliver adoption agreements and places obligations on companies to work with their customers (eg developers and SLPs) to develop, agree and maintain sector guidance and model adoption agreements.²⁵⁵
433. Ofwat expects the Code to provide greater clarity, consistency and certainty for developers and SLPs about how they can get the services they need from water companies for adoption agreements, while continuing to assure water companies that they are adopting quality, resilient infrastructure.
434. The sector guidance and model adoption agreements must be submitted to Ofwat for approval²⁵⁶ and will then form part of the Code. The Code also sets an obligation on companies to comply with the sector guidance and failure to comply could result in Ofwat issuing a statutory direction to a company.
435. To deliver early benefits from the Code, Ofwat also required water companies to publish details of their current procedures for making, carrying or terminating adoption agreements by 15 January 2018 and, by 2 April 2018, to agree an appropriate form of redress if they fail to meet their current minimum levels of service.

²⁵² Ofwat, [Agreements for water and sewerage companies to adopt infrastructure – a discussion paper](#), September 2016.

²⁵³ Ofwat, [Consultation on the Code for Adoption Agreements](#), June 2017.

²⁵⁴ Ofwat, [Code for Adoption Agreements](#), November 2017.

²⁵⁵ The Code sets out the minimum requirements for these documents, including information and publication requirements; when deviations from them may be permitted; and governance arrangements, which include the sector convening panels to deal with changes to the codes.

²⁵⁶ The water sector guidance and model adoption agreement by 1 October 2018 and the wastewater sector guidance and a model wastewater adoption agreement by 1 April 2019.

Changes to the legal/regulatory framework since April 2017, including any new regulations put in place during the year, which might significantly affect competition and innovation

New connection charges

436. In 2017, Ofwat consulted on and published new charging rules for connection charges, which take effect from 1 April 2018 for companies wholly or mainly in England.²⁵⁷ These new rules include requirements for water and wastewater companies to provide upfront charges for most connections services and make the charges for offsite reinforcement works more transparent and cost reflective. Importantly, the new rules should ensure a level playing field between incumbent water companies, NAVs and SLPs and enable customers to compare the cost and service available from these different providers. As such, the new rules should better enable effective competition in the new connections market. The new charging rules, and the greater choice of providers they will enable, are expected to deliver improvements in service delivery, innovation and efficiencies for customers across the sector.
437. Ofwat is now in the process of working with the Welsh government and wider stakeholders to develop a set of new connections rules to apply to appointed water companies that operate wholly or mainly in Wales.

Retail Business Market Codes

438. The legal and regulatory framework that underpins the business retail market includes a suite of market codes which together set out the market's rules, including how market participants work with each other and safeguards to protect customers. Since market opening, a number of code modifications have been made which have already improved the functioning of the market. Two of these were more substantive modifications, concerning the use of unsecured credit and the ability of market participants to negotiate in good faith when considering alternative eligible credit support arrangements. As discussed further below, these modifications were made to increase the potential for effective competition in the market.
439. Ofwat has approved a number of other code changes relating primarily to the Central Market Operating System,²⁵⁸ to help ensure the market and its

²⁵⁷ Ofwat, [Charging rules for new connection services \(English undertakers\)](#), August 2017.

²⁵⁸ This is the core IT system that underpins MOSL's role within the new water market. CMOS manages all the electronic transactions involved in switching customers and provides usage and settlement data which is used in the billing process.

systems and processes operate effectively. These code changes have largely been driven by the industry, working together with MOSL,²⁵⁹ and are governed by the formal Codes Panel process.

Unsecured credit

440. Prior to market opening, Ofwat decided that retailers should be required to provide 50 days of collateral to wholesalers as part of an efficient allocation of risk in the market (around 60% with wholesalers bearing the remaining 40% risk exposure). This can be done via one of six regulated credit options set out in the market codes. One of these options, an unsecured credit allowance, allows a retailer with a good credit history to use this to reduce the amount of collateral it is required to provide to wholesalers. The market codes at market opening included a provision that allowed a retailer to use the credit strength of its parent company to access an unsecured credit allowance.
441. In October 2017, following a proposal by a market participant, Ofwat introduced a code modification (to come into effect in April 2018) to remove this provision because, among other things, it was concerned that the code as written was ambiguous and would result in an uneven playing field for retailers which would not be good for competition. In addition, the previous code rules resulted in the risk sharing split between wholesalers and some retailers that was inconsistent with the 60/40 risk sharing allocation explained above. The modification levelled the playing field by ensuring that retailers are treated on an equal basis, regardless of its ownership structure.

Negotiating reasonably and in good faith

442. In addition to the regulated credit options included in the market codes, there is also a provision that allows wholesalers and retailers to agree alternative bespoke credit arrangements bilaterally. Ofwat became aware that some retailers were trying to use the provision for agreeing alternative eligible credit support, but were having difficulties during negotiations with wholesalers. A code modification was introduced in July 2017 to strengthen the obligations on wholesalers and retailers to negotiate reasonably and in good faith with each other. This increased the scope for new entrants to enter and operate effectively in the market and innovate when considering their credit arrangements.

Review of credit arrangements

²⁵⁹ See footnote 248 above.

443. In January 2018, Ofwat commissioned a review of the current credit arrangements to establish whether the current arrangements create undue barriers to entry. The first part of the review concluded at the end of March and identified a number of areas where the current arrangements could be amended or clarified to improve the effectiveness of this part of the framework. Ofwat will consider these findings and will set out next steps in this work during the summer.

Cases under the competition prohibitions since April 2017

444. There were no competition cases that have been opened or closed since April 2017.

Market studies undertaken since April 2017

445. There were no market studies under the Enterprise Act 2002 opened or closed since April 2017 and no market studies which are ongoing.
446. Although Ofwat has not initiated any market studies under the Enterprise Act 2002, it has undertaken the following market review work.

The review of the NAV market

447. As noted in paragraph 430, the sector's NAV regime²⁶⁰ provides a degree of competition for the market, enabling new entry into the sector and allowing those already present to expand into other geographical areas. A new entrant (a new appointee) or existing NAV licence holder can apply to take over as the monopoly provider for a specific geographical area and hence provide both wholesale and retail services to customers in the area of appointment.²⁶¹ The introduction of this form of competition for the market was seen as a means of harnessing market forces to provide a challenge to incumbents; drive efficiencies; and stimulate innovation. In doing so, it was hoped that the market would deliver benefits for all customers through lower prices, improved service, environmental benefits, as well as offering greater choice of supplier for developers and large user customers.
448. To be able to grant a NAV, one of the following three criteria must be met:
- (a) Unserved criterion – the site has no existing water or wastewater connection(s);

²⁶⁰ Section 8 [Water industry Act 1991](#).

²⁶¹ Similarly to other statutory undertakers, NAVs are able to choose to exit the business retail market.

- (b) Consent criterion – the existing local monopoly provider agrees to transfer the site or premises to the new appointee; or
- (c) Large user criterion – the site / premises uses more than 250 million litres a year for customers of appointed companies operating wholly or mainly in Wales or more than 50 million litres of water for customers of appointed companies operating wholly or mainly in England.
449. In November 2016, Ofwat commissioned a review to investigate how the NAV market is working; to consider the extent to which any factors act to prevent, restrict or distort the market from achieving its full potential; and to set out options to address any issues identified – taking account of the extent to which current and planned initiatives and policy developments are capable of addressing these issues. The review was undertaken using Ofwat’s regulatory powers under section 27 WIA91.
450. In October 2017, Ofwat published the review’s findings²⁶² alongside a paper setting out the steps Ofwat will be taking to address issues identified.²⁶³ The review drew on published information and extensive stakeholder engagement. It found that while the number of NAV applications has increased, the scale of the market is still relatively modest. Stakeholders have expressed concerns about the extent to which the existing regime is fit for purpose and NAVs have highlighted various difficulties they have encountered in entering the market and competing to provide services to new development sites.
451. The review identified a number of potential barriers faced by NAVs wishing to participate in the market. These barriers include:
- Process – regulatory, policy and administrative issues faced by applicants for a new appointment or variation
 - Behavioural – the transparency of information and the timeliness of the provision of input services by incumbents to NAVs
 - Pricing – the impact of incumbents’ charges on the margin that NAVs are able to earn
452. Ofwat’s next steps document outlined a number of actions to address the concerns cited in the review. These included:
- Reviewing policies and processes to minimise regulatory and administrative barriers

²⁶² Ofwat, [NAV study findings](#).

²⁶³ Ofwat, [Study of market for new appointments and variations – findings and next steps](#).

- Consulting on changes to rules on new connection charging²⁶⁴ and on updating its guidance on bulk supply charging
 - Challenging the water sector to improve access to information and the delivery of services to NAVs
453. Ofwat will monitor progress to address the issues identified by the review and will continue to engage with market participants to assess the extent to which these actions are helping to make the market work more effectively to deliver benefits for customers. Depending on progress, Ofwat may decide to take further action, using the full range of tools available to it.
454. The review also said that Ofwat would consider the strategic role that it anticipates NAVs playing in the sector in future years; the benefits that a successfully functioning NAV market could deliver to customers in terms of competitive diversity and innovation; and the way that Ofwat regulates the sector to ensure an appropriate balance between facilitating and promoting effective competition and protecting customers. Ofwat will be reviewing these issues during 2018.

Bulk Supplies

455. Bulk supply charges can be a source of disputes between NAVs and incumbents. Water companies can ask Ofwat to make a determination if they fail to agree on the terms of their bulk supply or discharge agreement, including the charges. The existing guidance is high-level and pre-dates the non-household retail market opening (and the introduction of separate wholesale caps and charges). Frontier Economics' study on NAVs published last year also highlighted that the current approach to set bulk supply charges may be failing to create a level playing field for developers' services. The Frontier Economics study identified that, on the whole, incumbent water company bulk supply charges make no allowance for the "last-mile infrastructure" costs that NAVs incur and, as a result, NAVs are placed at a significant competitive disadvantage when bidding for sites, particularly for small and medium sized development sites.
456. In November 2017, Ofwat consulted on draft new pricing guidance²⁶⁵ to supplement the bulk supply pricing principles published in 2011. This guidance informs the industry of Ofwat's approach if it received a dispute about bulk supply pricing or terms after the guidance is finalised. The scope of

²⁶⁴ Ofwat, [Charging rules for new connections for customers wholly or mainly in England: decision document](#), December 2016.

²⁶⁵ Ofwat, [Bulk charges for NAVs](#), November 2017.

disputes which can be referred to Ofwat includes charges for any range of bulk services required by NAVs to provide their services to their end-customers

457. The consultation ended on 8 January 2018 and Ofwat received 23 responses, almost all welcoming the consultation and agreeing with the need to update the guidance. Ofwat's final guidance document is expected to be published in May 2018.
458. Since 1 April 2018 Ofwat has had the power to make charging rules about bulk supply and bulk discharge agreements between English water companies. From 1 April 2019 Ofwat will have the power to make charging rules about bulk supply and bulk discharge agreements between Welsh water companies. Ofwat will make a decision later in the 2018 about the need for bulk supply and discharge agreements between English water companies. Any rules will build on the new bulk supply pricing guidance but will be wider in scope and binding on the companies.

Decisions taken since April 2017 to use Ofwat's direct regulatory powers instead of competition prohibition powers

459. Schedule 4 of the Enterprise and Regulatory Reform Act 2013 requires Ofwat to report on any decision it has taken, in respect of a case in relation to which it is satisfied that its functions under Part I of the Competition Act 1998 are exercisable, where it decided that it is more appropriate for it to proceed by exercising functions other than those it has under Part I of the Competition Act 1998. Since April 2017, there have been no occasions where Ofwat has been satisfied that its functions under Part I of the Competition Act 1998 have been exercisable but has nevertheless decided that it is more appropriate for it to proceed by exercising functions other than its Part I functions.
460. Ofwat also has a duty²⁶⁶ to consider, before exercising its direct regulatory powers of enforcement, whether it would be more appropriate to proceed under competition powers. Since April 2017, there have been no cases in which competition concerns arose such that Ofwat needed to consider the use of its competition powers further prior to it exercising its relevant regulatory powers.

²⁶⁶ Under section 19 and 22A of the [WIA91](#); this is commonly known as the 'primacy obligation'.

Future work, and proposed changes to regulation, to improve competition and innovation

Business retail market – ‘State of the Market’ report

461. In summer 2018, Ofwat will publish its first ‘state of the market’ report. This will review how the competitive market has developed during the first year of the business retail market, and how well it is delivering good customer outcomes. The report will draw on a number of market metrics and indicators of customers’ experiences, including MOSL’s market monitoring statistics, retailers’ submissions, consumer research and the Consumer Council for Water collated complaints statistics.
462. The report will assess how well competition is developing and delivering good customer outcomes. It will address a number of key areas, including:
- (a) The number and nature of the market participants and any barriers to entry or participation;
 - (b) Customer engagement in the market, including any barriers to participation and whether all customer groups have a similar opportunity to engage in and benefit from competition;
 - (c) The operation of the competitive market, including the role of wholesalers and retailers in facilitating effective market operation and the identification of any issues that hinder it; and
 - (d) The extent and nature of any benefits the market is starting to deliver for customers and wider society.

Residential Retail Review

463. As detailed in the 2017 Annual Concurrency Report, in September 2016 Ofwat undertook an assessment for UK government of the costs and benefits of extending competition to the household retail market. The assessment identified a range of scenarios and concluded that, although there can be no guarantees of how successful introducing competition to the residential retail water market would be, the evidence suggests a net positive outcome is more likely than not. Ofwat’s analysis indicated the market could generate potential benefits of up to £2.9 billion over 30 years.
464. The experiences of the business retail market will be helpful in shaping the evidence base for any further steps the UK government may take in relation to introducing retail competition for residential customers. Ofwat will continue to work with the UK government to aid its decision as to whether to pursue opening the residential retail market to competition.

Price Review 2019

465. Ofwat's Water 2020 (W2020) framework and methodology for the sector's next price review in 2019 (PR19) will enable greater use of markets in the provision of networks and wholesale water and wastewater services in England and, where it aligns with Welsh government policy, in Wales.
466. In July 2017, Ofwat consulted on its draft methodology for PR19,²⁶⁷ which will determine the price, investment and service package that customers receive for the 2020-25 period. Ofwat published its final PR19 methodology²⁶⁸ in December 2017. Water companies will be required to submit their business plans to Ofwat in September 2018, and Ofwat will issue its final determinations on their price controls in December 2019.
467. PR19 will enable and incentivise upstream competition, encouraging innovation, efficiency, resilience and better services for customers by:
- Supporting the bidding market for water resources, demand management and leakage services through providing opportunities for wholesalers of water resources to 'bid in' innovative solutions to incumbent companies. This will encourage wholesalers to consider how they could optimise water supply beyond their geographical area of appointment, and help incumbents to meet their future water needs as set out in their water resource management plans
 - Maintaining the water trading incentives introduced at the last price review (PR14) for new water exports and imports in order to boost bulk water trading between incumbent water companies
 - Introducing Direct Procurement for Customers, whereby incumbent companies will be able to procure services, including financing, on behalf of customers for projects valued at over £100m. This will enable incumbents to explore opportunities for more efficient and innovative ways to build and manage infrastructure
 - Promoting a market for trading bioresources²⁶⁹ (transportation, treatment and recycling/disposal), creating opportunities to optimise the value of bioresources

Upstream reform

²⁶⁷ Ofwat, [Delivering Water 2020: Consulting on our methodology for the 2019 price review](#), July 2017.

²⁶⁸ Ofwat, [Delivering Water 2020: Our final methodology for the 2019 price review](#), December 2017.

²⁶⁹ Bioresources are the semi-solid product of the treatment of sewage, often referred to as sewage sludge. Bioresources have a value as fuel for energy production and as a fertiliser.

468. Through a change to appointed companies' licences in 2017, Ofwat has set out what information regulated companies should publish or provide to enable the market, and data on market activity in the areas of water resources and bioresources. The first information from this was published in January 2018 for water resources and will be published for bioresources in July 2018.
469. Moving forward, Ofwat will publish a discussion document in spring 2018 seeking views on the best options to take forward future reform of water resource markets after PR19. For example, one option would be to require government to implement the outstanding provisions in the WA14, which would, for the first time, enable retailers to contract directly with third party providers of water resources using an incumbent's distribution network (ie bilateral markets), and developing Ofwat's policies in support. The document will discuss options for markets to help reduce bills, drive water efficiency and increase system resilience.

J. Utility services (electricity, gas, and water and sewerage services) in Northern Ireland – Northern Ireland Authority for Utility Regulation

470. The Northern Ireland Authority for Utility Regulation (NIAUR) is a non-ministerial independent government department responsible for regulating Northern Ireland's electricity, gas, water and sewerage industries.
471. Where the NIAUR is considering exercising its functions, it is generally required to carry out those functions in a manner it considers best calculated to further the 'principal objective', wherever appropriate by either promoting or facilitating competition.
- (a) **Electricity:** The principal objective in electricity is to protect consumers, where appropriate by promoting effective competition.²⁷⁰
- (b) **Gas:** The principal objective in gas is to "promote the development and maintenance of an efficient, economic and co-ordinated gas industry in Northern Ireland...". Subject to the principal objective, the NIAUR is obliged to carry out its functions in a manner which it considers is best calculated to facilitate competition.²⁷¹
- (c) **Water and sewerage:** The principal objective in water and sewerage is to protect consumers, where appropriate by facilitating effective competition.²⁷²
472. The NIAUR has powers to enforce the competition prohibitions in the Competition Act 1998 in relation to the activities for which it is responsible and to make market investigation references under the Enterprise Act 2002 to the CMA in relation to those activities.²⁷³
473. The Northern Ireland markets differ somewhat from the equivalent markets in Great Britain. For example, there are around 870,000 electricity and around 238,000 gas consumers in Northern Ireland, meaning that markets are significantly smaller. Further, unlike in Great Britain, oil is the primary home heating fuel in Northern Ireland.

²⁷⁰ [The Energy \(Northern Ireland\) Order 2003](#) article 12.

²⁷¹ [The Energy \(Northern Ireland\) Order 2003](#) article 14.

²⁷² [The Water and Sewerage Services \(Northern Ireland\) Order 2006](#) article 6.

²⁷³ [The Electricity \(Northern Ireland\) Order 1992](#) article 46; [The Gas \(Northern Ireland\) Order 1996](#) article 23; [The Water and Sewerage Services \(Northern Ireland\) Order 2006](#) article 29.

474. In addition, the gas and electricity retail markets have only been opened up to new market entrants in recent years. Competition exists now in the domestic and non-domestic sectors of both the electricity and gas markets in Northern Ireland. Active domestic competition in both gas ('Greater Belfast' gas network area) and electricity (entire market) started in mid-2010. The 'Ten Towns'²⁷⁴ gas network area has been open to competition for domestic and small non-domestic consumers since April 2015.
475. Monopoly owners of the electricity transmission and distribution network and the gas networks in Northern Ireland are subject to a network price control to ensure customer protection. Although supply price controls have been removed in the regulated energy sector in Great Britain and recently in the Republic of Ireland, this was in the context of significantly more mature markets and greater levels of competition, as well as a much greater market size and potential for truly effective competition to protect consumers.
476. The NIAUR retains end-user price regulation only in those areas of the market where the former monopoly incumbent retains significant market power. The price regulation of the former incumbent, which is the market's price leader, removes the potential for abuse of dominance and ultimately avoids unjustified increases in customer bills. Alternative suppliers are not subject to end-user price regulation.

General developments since April 2017 from a competition or policy perspective

Energy (electricity and gas)

477. Following consultation, the NIAUR further opened the gas markets in Greater Belfast for non-domestic customers in April 2017, in what is known as the EUC2 (End User Category 2) sector.²⁷⁵ This means that end user price regulation no longer exists in this sector and the previous incumbent, SSE,

²⁷⁴ In Northern Ireland there are two distinct distribution areas for natural gas. These are the Greater Belfast area and the Ten Towns area. In the Ten Towns area, the incumbent supplier holds a licence to supply gas which granted it a period of exclusivity for supplying gas to customers within the Ten Towns area. This period of exclusivity ended on 30 September 2012 for customers using more than 732,000 kWh per annum, typically large industrial and commercial customers. The period of exclusivity for all customers (including domestic) using less than 732,000 kWh per annum ended on 31 March 2015.

²⁷⁵ This is a non-domestic sector encompassing customers that consume between 2,500 and 25,000 therms per annum. The previous incumbent supplier (SSE Airtricity) held a market share of c.40% by customer number and c.40% by consumption.

will be able to offer gas contracts to customers on the same basis as the other four suppliers in that sector.

478. In November 2017, the NIAUR also decided²⁷⁶ to remove the gas price control from the same non-domestic sector in the Ten Towns market (where Firmus energy is the former incumbent). The removal of the end-user price control took effect on 1 April 2018.
479. In October 2017, the NIAUR published a consultation on measures to enhance the operation of the small business market in electricity and gas in Northern Ireland. Many of the measures are the same as those that resulted from the CMA market investigation in Great Britain such as tariff transparency measures and a removal of automatic rollover contracts. The NIAUR has also included some specific measures such as deposits having to be set at a reasonable level, exit fees being reasonable and making prepayment meters available for small business customers (currently in Northern Ireland, prepayment metering is only available to domestic customers).
480. The NIAUR engaged with industry and customer representatives in a roundtable event at which it gathered views on potential measures to enhance the operation of the small business market in electricity and gas in Northern Ireland. Ofgem participated in this event and shared its learnings from the market in Great Britain. The NIAUR has also engaged bilaterally on a project with the Consumer Council for Northern Ireland and the Federation of Small Businesses to get customer specific views, especially around the issue of tariff transparency.
481. The NIAUR sent out a call for evidence to all electricity and gas suppliers during November 2017 regarding broker activity in Northern Ireland. This is to inform the NIAUR of the scale of broker activity in Northern Ireland and to decide if any consultations should be published.
482. The NIAUR is currently working with NIE Networks to introduce contestability for all connectees, with implementation currently anticipated in spring 2018. This will allow choice in who carries out the work associated with connecting to the electricity network in Northern Ireland. Contestability was introduced for connectees of 5 Megawatts and over in May 2016, with two connection offers accepted by NIE Networks to date. Contestability for connectees of 5 Megawatts and under is expected in spring 2018 once the required IT systems are in place. Once these systems are in place, the NIAUR anticipates

²⁷⁶ This is a decision taken under Article 14 of the [Gas \(Northern Ireland\) Order 1996](#) to effect licence modifications.

introducing licence modifications in spring 2018 to ensure and monitor compliance with NIE Networks' obligations to provide a contestable connections offer.

Awareness of competition law

483. Members of the NIAUR's legal team and the CMA provided training on competition law to all NIAUR staff. NIAUR will hold a workshop on competition law to retail suppliers (both in gas and electricity) in early 2018. The NIAUR wishes companies to be aware of their obligations under competition law to ensure they are compliant. The NIAUR also wants to increase awareness of competition law more widely in order to encourage complaints from stakeholders if they suspect anti-competitive behaviour is occurring.

Changes to the legal/regulatory framework since April 2017, including any new regulations put in place during the year, which might significantly affect competition and innovation

Electricity

484. The NIAUR completed its review of electricity distribution and transmission connections policy in May 2017. One new regulation requires the Transmission System Operator, SONI, to prepare and publish a plan each year which sets out where and when new capacity will be built on the transmission electricity network. It is expected that the plan will provide more transparency to connection customers about where and when to connect. Such transparency will better aid decision making of customers who seek a connection to the transmission network. This will, in turn, support more efficient and timely access to the transmission network. It is anticipated that the greater knowledge of capacity levels will allow businesses greater scope in where they develop projects requiring a connection.

I-SEM

485. The Integrated Single Electricity Market (known as I-SEM), a new wholesale electricity market arrangement for Ireland and Northern Ireland, is set to go live in 2018. The new market arrangements are designed to integrate the all-island electricity market with European electricity markets, enabling the free flow of energy across borders and increasing the scope for competition. The internal energy market (for electricity and gas) is one of the key pillars of the European single market.
486. Under the capacity mechanism, power plants and other capacity providers in the 'all-island market' will obtain a payment for being available to generate

electricity or, in the case of demand response operators,²⁷⁷ for being ready to reduce their electricity consumption to help balance demand with supply. It helps to ensure that there is sufficient capacity to meet electricity demand at all times in Ireland and Northern Ireland.

487. In November 2017, the European Commission concluded that the capacity mechanism complies with EU State aid rules, in particular because it is open to all potential types of capacity providers, including demand response. Furthermore, the measure will keep costs for consumers in check thanks to the regular competitive auctions to allocate capacity contracts.²⁷⁸
488. By the time the I-SEM goes live in 2018, the internal energy market is expected to comprise more than 20 bidding zones,²⁷⁹ coupled by more than 40 cross-border interconnectors. As long as energy can flow freely, there will be a single price across all coupled markets.²⁸⁰ When the network is congested between bidding zones, prices will diverge between those zones. This price differential will incentivise efficient short-run use of the available capacity given the constraint and efficient longer-term investment in infrastructure to relieve the congestion. The end result should be a reduction in bills for consumers.

Gas

489. In October 2017, the single Gas Market Operator for Northern Ireland (GMO NI) went live operationally. The GMO NI is a contractual joint venture between the four Transmission System Operators in Northern Ireland and manages the commercial rules and trading aspects of the gas transmission market in Northern Ireland. It provides a single point of contact for all commercial activities and delivering efficiencies. In particular, shippers will benefit from having a single system, single operating code, single interface for market operations and avoidance of duplication of tasks, enabling simplified

²⁷⁷ A demand response operator is responsible for the operation of an individual or aggregated demand site. The operators have the technical and operational capability to deliver demand reduction (by reducing or shifting their electricity consumption) in response to instructions from the relevant system operator. This creates an opportunity for consumers to play a significant role in the operation of the electric grid by reducing or shifting their electricity usage during peak periods in response to time-based rates or other forms of financial incentives.

²⁷⁸ European Commission press release, [State aid: Commission approves joint capacity mechanism for Ireland and Northern Ireland](#), November 2017.

²⁷⁹ A bidding zone is the largest geographical area within which market participants can exchange energy without capacity allocation. Within bidding zones, market participants who wish to buy or sell electricity in another bidding zone, have to take into account grid constraints.

²⁸⁰ Market coupling refers to the integration of two or more electricity markets through an implicit cross-border allocation mechanism. Instead of explicitly auctioning the cross-border transmission capacities among the market participants, market coupling makes the capacities implicitly available on the power exchanges of the relevant areas.

processes and reduced market entry barriers for shippers. To facilitate implementation of the GMO NI, modifications were made to the high pressure gas licences and contractual arrangements were put in place between the Transmission System Operators.

490. The NIAUR has also modified the Northern Ireland gas high pressure licences to provide clarification regarding the provision of information embedding the annual cost reporting requirements in the licence, making them enforceable. These arrangements will form the basis for enhancing the reporting framework and build a robust data set for comparative analysis between network operators, performance reporting and efficiency challenges. The NIAUR considers that this work will enhance transparency within the market, and therefore encourage competition and market efficiency.
491. In March 2017, the European network code on harmonised transmission tariff structures for gas and the CAM (capacity allocation mechanism) was adopted. The CAM modifications are aimed at furthering the objective of setting non-discriminatory rules for access conditions to natural gas transmission systems with a view to ensuring the proper functioning of the internal market. The Tariff network code is aimed at furthering the objective of contributing to market integration, enhancing security of supply and promoting the interconnection between gas networks. Consequential changes were made to the transportation network codes as well as the low and high pressure gas licences. Work on the implementation of the Tariff network code is ongoing and will continue during 2018.

Cases under the competition prohibitions since April 2017

492. There were no cases under the EU or UK competition prohibitions opened or closed by the NIAUR in the year from April 2017 and no cases which were ongoing.

Market studies undertaken since April 2017

493. There were no market studies opened or closed since April 2017 and no cases which are ongoing.

Decisions taken since April 2017 to use NIAUR's direct regulatory powers instead of competition prohibition powers

494. Under Schedule 4 of the Enterprise and Regulatory Reform Act 2013, the CMA is required to report any decision taken by a sectoral regulator, in respect of a case in relation to which the regulator is satisfied that its functions under Part 1 of the Competition Act 1998 are exercisable, 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 2017, there have been no occasions on which the NIAUR has been satisfied that its functions under Part 1 of Competition Act 1998 are exercisable but has decided that it is more appropriate for it to proceed by exercising functions other than those it has under Part 1 of the Competition Act 1998.

495. The NIAUR has a duty²⁸¹ to consider, before exercising its powers under certain sector-specific legislation, whether it would be more appropriate to proceed under competition powers. Since April 2017, the NIAUR has instigated three processes (involving direct regulatory action) against regulated companies and considered several complaints by individuals and companies. Each of the formal processes resulted from information suggesting a potential licence breach had occurred. Further, the complaints processed by the NIAUR did not give any indication that a breach of competition law had occurred. Proceeding under sectoral powers was, therefore, the most appropriate means by which to address the concerns identified and ensure consumer interests were protected.

Future work, and proposed changes to regulation, to improve competition and innovation

496. In line with its commitment to monitoring and cost reporting activities, the NIAUR continues to implement structured templates for network operators with associated Regulatory Instructions and Guidance (RIG).²⁸² In particular, work is ongoing on the implementation of annual cost and performance arrangements for gas and electricity transmission system operators. These arrangements will form the basis for the ongoing work to enhance the reporting framework and build a robust data set for comparative analysis between network operators, performance reporting and efficiency challenges. The NIAUR considers that this work will enhance transparency within the market, and therefore encourage competition and market efficiency.
497. The NIAUR has set-up a project to prepare for EU exit. Work in this area is ongoing and expected to continue into 2019. It involves ongoing engagement with the UK, Ireland and Northern Ireland departments and network operators

²⁸¹ Under Articles 42 and 45 of the [Energy \(Northern Ireland\) Order 2003](#) and Articles 31 and 35 of the [Water and Sewerage Services \(Northern Ireland\) Order 2006](#); this is commonly known as the 'primacy obligation',

²⁸² The RIGs provide instructions and guidance for the completion of standardised templates. They are the main way the NIAUR will get information from the network operators, particularly in the context of price controls and for future benchmarking with Ofgem.

with a view to assessing the implications of EU exit and minimising any potential negative impact on competition and market efficiency.

498. The NIAUR is working on a review of the Guaranteed Standards of Performance for both electricity and gas customers. The Guaranteed Standards provide payments for customers where the company has failed to meet a prescribed level of service. The review covers both distribution and supply and the output will be a new set of Guaranteed Standards Regulations for electricity and an update to the current Gas Regulations. Company performance on the standards will also be reported and these results published.
499. The review stemmed from a need to update the Northern Ireland Guaranteed Standards to a level commensurate with the consumer protection and customer service levels afforded to consumers in Great Britain. As only one electricity distribution company exists in Northern Ireland, there is a clear need to set minimum levels of service. Increased reporting and transparency should incentivise the company to meet the prescribed customer service levels. In particular, aligning the levels of consumer protection and customer service levels in both jurisdictions will allow comparisons to be drawn between Distribution Network Operators operating in Great Britain and the Distributor in Northern Ireland. Public reporting of poor performance may encourage the company to work to improve this. In relation to suppliers, transparency and reporting on the Guaranteed Standards could increase competition, with suppliers striving to ensure they are on a par with, or improving on, the levels of service provided by competitors.