

Promoting competition in services we rely on

The annual concurrency report 2021

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Introduction

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

Table 1: Sector regulators and their responsibilities

Civil Aviation Authority (CAA)	Airport operation and air traffic services
Office of Communications (Ofcom)	Broadcasting, electronic communications and postal services
Gas and Electricity Markets Authority (Ofgem)	Electricity and gas in Great Britain
Financial Conduct Authority (FCA)	Financial services in the UK and the provision of claims management services in Great Britain ³
Payment Systems Regulator (PSR)	Participation in payment systems
NHS Improvement (NHSI)⁴	Healthcare services in England
Office of Rail and Road (ORR)	Railway services
Water Services Regulation Authority (Ofwat)	Water and sewerage services in England and Wales
Northern Ireland Authority for Utility Regulation (NIAUR)	Electricity, gas, water and sewerage services in Northern Ireland

2. The concurrency arrangements form a key part of the UK's competition regime and have an important role in enhancing competition and making markets work more effectively in the regulated sectors, with a view to achieving more competitive outcomes for consumers. These sectors account for an estimated

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

² The concurrency arrangements were introduced in their current form by the [Enterprise and Regulatory Reform Act 2013](#) and took effect from 1 April 2014. They created a framework within which the CMA and sector regulators might more effectively work together to improve competition and competition law enforcement in the regulated sectors.

³ The FCA has had concurrent competition powers in relation to the provision of claims management services in Great Britain since 1 April 2019. It has had concurrent competition powers in relation to financial services since 1 April 2015.

⁴ In February 2021, the government published its white paper with proposals to remove NHSI's competition roles as introduced in the Health and Social Care Act 2012 (including concurrency and its general duty to prevent anti-competitive behaviour), so that it can focus fully on NHS provider development and oversight. The CMA and NHSI have worked closely together on the development of these proposals. (See DHSC (2021), [Working together to improve health and social care for all](#)).

25% of GDP and almost every household and business in the UK relies on their services which range from basic utilities like heat, light, broadband and water to financial services such as banking and insurance.

3. Like the CMA, the sector regulators can, in the sectors for which they are responsible:
 - (a) apply the UK prohibitions on undertakings engaging in anti-competitive agreements or on the abuse of a dominant market position;⁵ and
 - (b) conduct market studies and, if appropriate, make a market investigation reference under which the CMA conducts an in-depth investigation into whether any feature, or combination of features, of a market in the UK for goods or services prevents, restricts, or distorts competition.⁶
4. The concurrency arrangements provide for cooperation between the CMA and the sector regulators in relation to their concurrent powers.
5. This report covers the period from 1 April 2020 to 31 March 2021. The first part of the report sets out the competition enforcement work that has been undertaken in the regulated sectors during this period, while the second part outlines the markets work that has been carried out. The report then provides an overview of the wider cooperation between the CMA and the sector regulators.
6. Unsurprisingly, the year was overshadowed by the coronavirus (COVID-19) pandemic (the pandemic). As we noted in the last report – which overlapped with the start of the pandemic – the pandemic has challenged the way regulators have worked and the prioritisation choices they have made. Standard procedures have had to be adapted (eg moving to holding oral hearings remotely), while some enforcement cases and markets work have been delayed or deprioritised as resources were moved elsewhere to deal with pandemic-related issues (eg the CAA’s decision to postpone its market power determination of Manchester Airport⁷). There were also additional challenges caused by lockdown, with staff having to work from home, take on childcare and themselves succumbing to illness. Nonetheless, despite these challenges, the CMA and regulators have continued to deliver, reaching key case milestones, concluding enforcement action, and, as the year progressed, starting new investigations and markets work. In particular, two infringement decisions were taken, three new investigations were launched and three Statements of

⁵ The UK prohibitions are in Chapters I and II of the [Competition Act 1998](#). Following the end of the Transition Period on 31 December 2020, the CMA and regulators can no longer enforce the equivalent EU prohibitions (Articles 101 and 102 of the Treaty on the Functioning of the EU).

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

⁷ See the CAA’s [airport market power assessment](#) page.

Objections were issued in the relevant reporting period in the sectors covered by concurrency.

7. The pandemic threw up a number of competition-related issues which the CMA and regulators needed to address. In particular, the CMA advised the government on Competition Act 1998 exclusion orders to enable a rapid coordinated response to the pandemic in select sectors,⁸ and published guidance to assist all UK businesses that found it necessary to cooperate with competitors (for example, to ensure continued supply or otherwise assist with national and local efforts to tackle the pandemic).⁹ The CMA also set up a taskforce to deal with issues thrown up by the pandemic, including price gouging where it advised government on legislative approaches to address the issue, and launched four Competition Act 1998 investigations into suspected charging of excessive and unfair prices for hand sanitiser.¹⁰
8. The regulators meanwhile took a range of actions to mitigate the economic effects in their sectors which may have had long term effects on competition (such as through market exit) by, among other things, amending or suspending certain regulatory requirements (in particular relating to costs and payments), as well as advising on cooperation between business in their sectors. The regulators have also adjusted the way they deal with businesses they regulate in the light of the impact of the pandemic on businesses in their sectors.
9. In previous reports, we have highlighted the increase in cooperation between the CMA and the regulators, not just in relation to competition enforcement, but across other competition-related activities and tools – therefore increasing the effectiveness of our respective work across the board. During this period, regulators continued to take steps to promote competition, both together and individually, despite the disruption and calls on resources for other work.
10. The relationship between the CMA and regulators will now also be informed by the findings from the CMA’s report into the state of competition in the UK.¹¹ The

⁸ Under competition law, the Secretary of State for Business, Energy and Industrial Strategy can make legislation to relax UK competition rules for certain agreements which might normally be considered anti-competitive (provided for under paragraph 7 of Schedule 3 to the Competition Act 1998). Exclusion orders were published covering groceries, dairy produce, maritime crossings and health care in England and Wales to allow them to cooperate to a greater extent than usually allowed under the Competition Act 1998 without fear of being prosecuted. See BEIS (2020), [Competition law exclusion orders relating to coronavirus \(COVID-19\)](#).

⁹ CMA (2020), [CMA approach to business cooperation in response to coronavirus \(COVID-19\)](#). A number of the regulators announced their support for this approach and issued similar guidance.

¹⁰ See CMA (2020), [Hand sanitiser products: suspected excessive and unfair pricing](#). Price gouging can be considered the expression of temporary and localised market power, which would therefore potentially infringe the Chapter II prohibition. For further discussion of this, and the CMA’s work in this area, see Havell.R, Jenkins.C, Rutt.J. Scanlon.E, Tregear.P, and Walker.M (2020), [Recent Developments at the CMA: 2019–2020, Review of Industrial Organisation](#).

¹¹ CMA (2020), [State of UK competition report](#)

headline finding of this work was that over the last 20 years competition in the UK overall may have weakened. Notably, competition appears to have weakened following the 2008 recession and the economic impact of the pandemic may weaken competition further in circumstances where it may not have fully recovered from 2008 (not least because recessions usually lead to greater concentration in markets). Additional concerns may arise as we emerge from the pandemic about ensuring that companies that have cooperated and coordinated activities during the pandemic (for example, to ensure continued supply of essential goods and services) do not continue to collaborate in ways that would be considered anti-competitive once the justifications associated with the pandemic fall away. The CMA and sector regulators will be at the forefront of efforts to protect and promote competition in the UK as the country recovers from the pandemic.¹²

11. Digital markets play a fundamental role in modern life, delivering substantial benefits for consumers, businesses and the economy more widely. However, the dynamics of digital markets have changed hugely, with a small number of digital firms now holding substantial market power, with the potential to cause significant harm to consumers and businesses that rely on them, to innovative competitors and to the economy and society more widely. This was borne out in the CMA's market study into online platforms and digital advertising. In December 2020, the CMA published advice to the government, having worked closely with Ofcom, the ICO and the FCA, on the design and implementation of a pro-competition regime for digital markets.¹³ The government has now also announced that it will establish a Digital Markets Unit, housed within the CMA, from April 2021, to begin work to operationalise this regime.¹⁴
12. Whilst a new pro-competition framework is needed to promote competition and protect consumers and businesses in digital markets, this framework cannot operate in isolation. It will need to be joined-up and coherent with the wider regulatory landscape, in particular with sectoral regulation, data protection regulation and with the government's new regime for harmful online content. The CMA, Ofcom and the ICO have already established the Digital Regulation Cooperation Forum (DRCF) to deliver a step change in coordination and cooperation between regulators in digital markets. This work does not strictly fall within concurrency but is evidence of expanding ways of working together

¹² Although the analysis was cross-economy and not focused on any specific sector, some of the regulated sectors were highlighted by some of the analysis – the financial & insurance sector showed a high increase in concentration, while evidence indicated that the transport, utilities and the telecommunications sectors performed poorly when it comes to satisfaction and trust (indicating potential poor competition on the basis that competitive markets improve consumer outcomes).

¹³ CMA (2020), *A new pro-competition regime for digital markets*

¹⁴ BEIS/DCMS (2020), *New competition regime for tech giants to give consumers more choice and control over their data, and ensure businesses are fairly treated*

between the CMA and regulators to protect and promote competition in the UK. The FCA will join the DRCF as a full member from April 2021.¹⁵

13. During the reporting period, the UK has completed the process of leaving the European Union, with the CMA and the regulators now having sole responsibility for protecting and promoting competition in the UK. This will likely result in an increase in the number of cases that UK competition authorities investigate, and these cases will likely involve more complex issues and multinational companies. Further, leaving the EU will have wider implications across the economy, which in turn will affect competition in many markets. In the specific context of concurrency, we particularly expect the increase in cases to be seen in the financial services and telecoms sectors. The CMA and the regulators have worked together throughout the Transition Period to ensure a smooth transition to full withdrawal, and the CMA has produced guidance on how the end of the Transition Period affects Competition Act 1998 cases.
14. Finally, during the period covered by this report, John Penrose MP was asked to write an independent report on improving the UK's approach to competition and consumer issues. His report was published in February 2021.¹⁶
15. The report makes a number of proposals, including improving Competition Act 1998 investigation processes to facilitate swifter outcomes, increasing penalties for non-compliance and reform of administrative processes and appeals. Most relevant to concurrency, the report also invites the government to give thought to changes to the role of the sector regulators – and to that of the CMA – with respect to the balance between the use of upfront rule-making and the use of competition and consumer law. Further, the report proposes that sector regulators set out plans to facilitate a transition to 'normal' competitive conditions in their respective sectors, with the regulators ultimately being responsible only for the regulation of the non-contestable assets and for ex post responsibility to pass over time to the CMA. The report also proposes removing the CMA's role in regulatory appeals. Clearly, the report contains much of relevance to the question of the correct balance between ex post competition law enforcement (and by extension the operation of concurrency) and ex ante regulation.
16. The CMA and regulators look forward to working with the government and others as the recommendations in the Penrose report are considered further.

¹⁵ The DRCF published its workplan for 2021//22 in March 2021 – see paragraphs 82 to 83 and CMA (2021), [Digital Regulation Cooperation Forum workplan 2021/22](#) for more detail.

¹⁶ John Penrose MP (2021), [Power to the people: independent report on competition policy](#)

Competition enforcement in the regulated sectors

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

Competition prohibitions

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

	2020/21	2019/20	2018/19	2017/18	2016/17	2015/16
Number of cases ongoing at start of reporting period	9	9	7	5 ¹⁷	6	9
Number of new complaints ¹⁸	18	14	16	18	9	5
Number of investigations formally launched	3	3	5 ¹⁹	4	2	2
Number of those cases in the year to date in which:						
- information gathering powers and powers to enter premises/conduct dawn raids were used	3	8	5	7	3	6
- a Statement of Objections was issued	3	2	3	1	1	1
Number of those cases in the year to date that resulted in:						
- an infringement decision	2	2	3		1	1
- the giving of commitments	0	1			1	1
- an exemption or clearance decision (or equivalent)	0					1
- case closure without full resolution	2			2 ²⁰	1	2
Number of cases that are ongoing	8	9	9	7	5	6
Number of cases in the year to date in which the decision was appealed to the CAT	1		1			
Decisions taken to use direct regulatory powers instead of competition prohibition powers where those competition prohibition powers could have been exercised	2					

¹⁷ 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.

¹⁸ 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.

¹⁹ The 5 cases include an investigation opened by the FCA under Chapter I of the Competition Act 1998 and Article 101 TFEU where formal powers had not been exercised as at 31 March 2019. Similarly, they include an investigation opened by Ofcom under Chapter I of the Competition Act 1998 and Article 101 TFEU just before the end of the reporting period but where Ofcom had not yet formally launched the investigation as at the date of the 2019 report.

²⁰ The FCA's investigation into conduct in the aviation insurance sector was closed, as the European Commission took the matter over.

18. At the start of the reporting period, there were nine open cases in the regulated sectors:
- (a) Ofcom had two open investigations, one in relation to the parcel delivery sector and the other into the provision of equipment and related services in the electronic communications sector.
 - (b) Ofgem had one open investigation into the provision of over the counter energy prepayment services in Great Britain.
 - (c) There were three investigations open in the financial services sector. The FCA was conducting one, with the CMA conducting the other two.
 - (d) The PSR had one open investigation into payment systems.
 - (e) Ofwat had one open investigation into the business retail market for water and sewerage services and associated markets for value added services.
 - (f) The CMA had an open investigation into the private healthcare sector.
19. Three new investigations were launched in the regulated sectors this year:
- (a) The FCA launched an investigation into the financial services sector.
 - (b) The ORR launched an investigation into the rail services sector.
 - (c) The CMA launched an investigation into online payments.
20. Statements of Objections were issued in three investigations during the reporting period:
- (a) Ofcom issued a Statement of Objections in its Chapter I investigation into the provision of equipment and related services in the electronic communications sector.
 - (b) Ofgem issued a Statement of Objections in its Chapter II investigation into an undertaking providing services to the energy industry
 - (c) The PSR issued a Statement of Objections in its Chapter I investigation into payment systems.
21. Two investigations in the regulated sectors resulted in an infringement decision this year:

(a) The CMA's investigation into the use of certain retail most favoured nation clauses by a price comparison website in relation to home insurance products.

(b) The CMA's investigation into the private healthcare sector.

22. Further details on the cases listed are included in the section below. As some of the investigations are currently ongoing, the information disclosed is limited to what is publicly available but relevant updates have been provided where possible.²¹

Communications

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

23. In October 2020, Ofcom issued a Statement of Objections to Motorola Solutions UK Limited, its ultimate parent company Motorola Solutions Inc., and Sepura Limited (together, the Parties).²² This sets out Ofcom's provisional view that the Parties infringed Chapter I of the Competition Act 1998 by exchanging competitively sensitive information relating to their pricing intentions for a procurement exercise run by the Police ICT company in 2018 covering devices, accessories and related services used on the Airwave radio network.²³

Chapter I investigation into the parcel delivery sector

24. In January 2021, Ofcom announced that it had decided to close its investigation into agreements between providers of parcel delivery and pick-up services. This investigation examined concerns that these agreements may have contained terms establishing minimum prices and imposing online sales restrictions. Ofcom closed this investigation because, having carefully considered the options available, it concluded that Ofcom's resources would be better directed towards other matters.²⁴

²¹ Some of the cases listed were also opened under Articles 101 or 102 TFEU. Following the end of the Transition Period in December 2020, these no longer apply to UK competition investigations.

²² Ofcom (2019), [Competition Act investigation regarding the provision of equipment and related services in the electronic communication sector](#). The investigation was launched in June 2019.

²³ Airwave is a private radio network, based on terrestrial trunked radio (TETRA) standards, used by the GB emergency services for two-way radio communications.

²⁴ Ofcom (2019), [Competition Investigation regarding parcel delivery and pick-up services](#)

Energy

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

25. In September 2020, Ofgem issued a Statement of Objections setting out its provisional view that PayPoint plc has breached UK competition law by abusing a dominant position in the market for the provision of over-the-counter top-up services to prepayment energy customers in a way that is likely to have distorted or restricted competition.²⁵

Financial services

26. Both the FCA and the CMA have carried out investigations in the financial services sector. The FCA's investigations are set out first, followed by the CMA's.

Chapter I investigation into financial services

27. In September 2020, the FCA used formal investigation powers in a new investigation into suspected anti-competitive arrangements under Chapter I of the Competition Act 1998 in the financial services sector. The investigation is progressing and the FCA is currently gathering and assessing evidence.

Chapter I investigation into financial services

28. In December 2020, the FCA closed its investigation (opened in March 2019) into suspected anti-competitive arrangements under Chapter I of the Competition Act 1998 in the financial services sector, on grounds of administrative priority. The investigation had not reached Statement of Objections stage.

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

29. In November 2020, the CMA issued an infringement decision addressed to BGL (Holdings) Limited, BGL Group Limited, BISL Limited (BISL), and Compare The Market Limited (collectively, 'Compare the Market'). The CMA found that, between 1 December 2015 and 1 December 2017, Compare the Market infringed the Chapter I prohibition of the Competition Act 1998 and Article 101 TFEU by using wide 'most favoured nation' clauses ('wide MFNs') in its contracts

²⁵ Ofgem (2017), [Investigation into whether PayPoint plc has infringed the requirements of Chapter II of the Competition Act 1998 and/or Article 102 Treaty on the Functioning of the European Union](#). The investigation was opened in August 2017.

with several home insurance providers selling through its price comparison website ('PCWs'), ComparetheMarket.com.

30. Compare the Market's network of wide MFNs prevented the relevant insurers from offering better terms and conditions on rival price comparison websites. This had the effect of:
 - (a) reducing price competition between PCWs;
 - (b) restricting the ability of Compare the Market's rival PCWs to expand, enabling Compare the Market to maintain or strengthen its market power; and
 - (c) reducing price competition between home insurers competing on PCWs.²⁶
31. The CMA imposed a penalty of £17,910,062 on Compare the Market.²⁷ Compare the Market has appealed the decision (see paragraph 47).

Chapter I investigation into financial services

32. The CMA is continuing to progress an investigation into suspected anti-competitive arrangements in the financial services sector which was opened in 2018. In the period covered by this report, the CMA reviewed and analysed additional evidence gathered in the investigation.

Payment systems

Chapter I investigation into payment systems

33. In March 2021, the PSR issued a Statement of Objections to five parties (Mastercard, allpay, APS, PFS and Sulion) in its first investigation under the Competition Act 1998. The Statement of Objections set out the PSR's provisional view that two potential infringements of Chapter I of the Competition Act 1998 took place in the prepaid cards market (covering cards operating on the Mastercard scheme only) through market sharing/customer allocation.
34. One alleged infringement involved all five parties and lasted six years (although some parties participated in the infringement for shorter periods of time); the other alleged infringement involved two parties (APS and PFS) and lasted two

²⁶ The CMA has applied [Rule 10\(2\) of the CMA Rules](#) in this case and has addressed its decision only to BGL, and not to any of the home insurers that were party to the agreements with BGL containing wide MFNs. Rule 10(2) provides that where the CMA considers that an agreement infringes the Chapter I prohibition, it can address an infringement decision to fewer than all those party to that agreement or engaged in that conduct.

²⁷ CMA (2017), [Price comparison website: use of most favoured nation clauses](#). Investigation opened September 2017 following on from the CMA's market study into digital comparison tools.

years. Both alleged infringements related to the supply of prepaid card services used for welfare disbursements to public bodies in Great Britain.

35. Three of the parties (Mastercard, allpay and PFS) have settled with the PSR. These parties have admitted taking part in the alleged anti-competitive arrangement(s) and, should the PSR ultimately conclude that there have been infringements, they have agreed to pay a maximum penalty totalling over £32 million.²⁸

Chapter I investigation into payment systems

36. In March 2021, the CMA launched an investigation into suspected breaches of competition law by Apple in the UK. In particular, the CMA is considering whether Apple has abused a dominant position in a market or markets relating to the distribution of native apps on iOS and iPadOS devices by preventing distribution of native apps to iOS and iPadOS users via any means other than through Apple's App Store and/or by making access to Apple's App Store subject to the acceptance of certain terms. The CMA has used its formal information gathering powers to obtain evidence and the investigation is currently ongoing.

Healthcare services in England

Chapter I investigation into the private healthcare sector

37. In July 2020, the CMA issued a decision finding that Spire Healthcare Limited and its parent company, Spire Healthcare Group plc (Spire), and seven consultant ophthalmologists had infringed competition law by taking part in illegal price fixing of initial consultation fees for self-pay patients at a hospital in the north of England.
38. The CMA imposed fines of more than £1.2 million on Spire and six of the ophthalmologists. The fines included a 20% settlement discount to reflect the fact that Spire and the ophthalmologists had admitted their role in the infringement and agreed to cooperate with the CMA.
39. No fine was imposed on one consultant ophthalmologist as he had brought the illegal activity to the CMA's attention, admitted his participation and fully cooperated with the CMA's investigation under its leniency programme.²⁹

²⁸ PSR (2021), [The PSR provisionally finds five companies broke the law by engaging in cartel behaviour in the pre-paid cards market](#). The investigation was launched in 2018.

²⁹ CMA (2019), [Privately funded ophthalmology services](#). This investigation was opened in July 2019.

Water and sewerage services

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

40. In June 2019, Ofwat launched an investigation into a potential abuse of a dominant position by Thames Water. In particular, Ofwat suspects that Thames Water's approach to installing digital smart meters, which affects third-party providers of data logging services and their customers, may be anti-competitive and infringe the Chapter II prohibition of the Competition Act 1998.³⁰
41. During the reporting period, Ofwat has removed two issues from the Competition Act 1998 investigation and opened separate investigations to instead consider these using powers under the Water Industry Act 1991 – see paragraph 52. The first relates to the accuracy of data about customers that Thames Water made available to retailers at the time the business retail market opened in April 2017 (this investigation remains ongoing). The second issue relates to the fairness of certain credit terms that Thames Water applied to retailers. Ofwat has now closed this investigation after Thames Water made revisions to its terms and conditions.
42. During the period of this report, Ofwat has used its formal powers to gather evidence as part of its investigation.

Rail services

43. The ORR launched an enforcement case relating to the provision of certain testing services in the passenger rail transport sector.³¹

Other relevant competition enforcement work

Water and sewage

Bristol Water commitments

44. In November 2020, Ofwat gave notice of its intention to release Bristol Water Plc from commitments made under the Competition Act 1998 in 2015 following an investigation into potential abuse of dominance in the self-lay market for new

³⁰ Ofwat (2019), [Investigation into whether Thames Water is contravening the Competition Act 1998](#)

³¹ ORR (2021), [Competition Act 1998 | Office of Rail and Road](#)

connections³² and invited representations on its proposals.³³ Ofwat intends to publish its final decision in April 2021.

Cases appealed to the Competition Appeal Tribunal

45. In August 2018, Ofcom issued its decision that Royal Mail had infringed the Chapter II prohibition and Article 102. Ofcom found that Royal Mail had abused its dominant position in the market for bulk mail delivery services in the UK by introducing discriminatory pricing. Specifically, Ofcom found that lower prices for wholesale bulk access were not available to access operators that operated their own delivery services.
46. In October 2018, Royal Mail appealed Ofcom's decision to the Competition Appeal Tribunal (CAT). The CAT dismissed Royal Mail's appeal in November 2019, upholding Ofcom's decision on all grounds, including the financial penalty.³⁴ Royal Mail sought permission to appeal the judgment to the Court of Appeal. In January 2020, the CAT refused Royal Mail's application for permission to appeal. Royal Mail was subsequently granted permission by the Court of Appeal to appeal part of the CAT's judgment and a hearing is expected in 2021.
47. In February 2021, Compare the Market appealed to the CAT the CMA's decision finding that it had infringed Chapter I of the Competition Act 1998 and Article 101 TFEU in its use of MFN clauses in relation to home insurance products.³⁵ Compare the Market's appeal challenges the CMA's decision both on liability and on the penalty.³⁶ A hearing is expected in April 2021.

Use of advisory/warning letters

48. The CMA and regulators can issue advisory and warning letters in situations where there are concerns that certain practices may be restricting competition but for which a formal investigation has not been launched. Both advisory and warning letters are softer enforcement tools that are designed to increase awareness of competition law and encourage compliance.
49. The FCA has issued four 'on notice' letters (the FCA's equivalent of warning letters) to firms during the period of this report. The FCA uses these where

³² Ofwat (2015) [Decision to accept binding commitments from Bristol Water plc](#)

³³ Ofwat (2020) [Notice of our intention to release the Commitments made under the Competition Act 1998 by Bristol Water Plc in relation to the market for new water connections](#)

³⁴ [Royal Mail PLC v Office of Communications and Whistl UK Limited \[2019\] CAT 27](#)

³⁵ See paragraph 29 for details of the investigation.

³⁶ [Case No: 1380/1/12/21 BGL \(Holdings\) Limited & Others v Competition and Markets Authority](#)

evidence suggests competition law has potentially been infringed, but where the FCA's other priorities mean it is less likely to open an investigation.³⁷ The types of behaviour which led to the 'on notice' letters included potentially anti-competitive coordination between competitors.

50. The FCA also issued 14 advisory letters during the period of this report. The types of behaviour that led to advisory letters included potentially anti-competitive contractual clauses and potentially anti-competitive information exchange.

Decisions taken since April 2020 to use direct regulatory powers instead of competition prohibition powers

51. Under Schedule 4 to the Enterprise and Regulatory Reform Act 2013, the CMA has a duty to report on any decision taken by a regulator, in which the regulator is satisfied that its functions under Part 1 of the Competition Act 1998 in a case are exercisable, but that it is more appropriate for it to proceed by exercising functions other than those that it has under Part 1 of the Competition Act 1998.
52. In this reporting period, Ofwat was satisfied in one case that its functions under Part 1 of the Competition Act 1998 were exercisable, but that it was more appropriate for it to proceed by exercising functions using the Water Industry Act 1991. In its enforcement action against Thames Water, Ofwat considered that two of the issues under investigation would be better dealt with under the Water Industry Act 1991 for two main reasons. First, with respect to issues around the accuracy of customer data made available to water retailers when the business retail water market opened, it would allow a more targeted approach to address strategically significant issues regarding data quality which have wider relevance in the business retail market and water sector. Secondly, with respect to the fairness of certain credit terms applied to water retailers, it would allow for a more timely outcome.
53. None of the other regulators took a decision that its functions under Part 1 of the Competition Act 1998 were exercisable but that it was more appropriate for it to proceed by exercising functions other than its Part 1 functions.
54. In addition to the above, the sectoral regulators have a duty to consider whether, before exercising certain specified powers under their respective sector-specific

³⁷ See paragraph 3.7 of FCA (2015), [The FCA's concurrent competition enforcement powers for the provision of financial services](#).

legislation, it would be more appropriate to proceed under the Competition Act 1998.³⁸

55. The CAA indicated that there was one occasion during the current reporting period where it exercised its sectoral enforcement powers³⁹ and where it had a duty to consider whether it would be more appropriate to proceed under the Competition Act 1998. In February 2021, the CAA published its decision on whether NATS (En-Route) plc (NERL) had contravened its obligations under its Air Traffic Services Licence and the Transport Act 2000.⁴⁰ In its decision, the CAA considered that it would not be appropriate to proceed under the Competition Act 1998 given that licensing complaints raised broader issues and allegations affecting airspace users which went beyond competition law matters. Therefore the enforcement tools under the Transport Act 2000 would be more likely to achieve a comprehensive solution and a Competition Act 1998 investigation would limit the issues able to be considered. The CAA investigated a number of complaints and found that NERL had contravened its statutory and licence duties and obligations, in the period January 2019 to March 2020, in relation to the provision of sufficient staffing resilience in the London Approach Service for users of Stansted and Luton airports. Given that there was no current breach, however, the CAA did not consider it appropriate to take enforcement action
56. Ofcom also indicated that during the reporting period it exercised its sectoral enforcement powers in one case which gave rise to the need to consider whether it would be more appropriate to proceed under the Competition Act 1998. This concerned Ofcom's investigation of BT's conduct in winning a tender competition to provide electronic communications services to public bodies in Northern Ireland. It considered that sectoral powers were more appropriate and continued with the investigation under the regulatory framework for the wholesale local access market. In December 2020, Ofcom announced that it had found that BT had failed to comply with a relevant regulatory condition and imposed a penalty of £6.3 million.⁴¹
57. Ofgem indicated that there were eight occasions during the reporting period where it exercised its sectoral powers⁴² rather than exercising its powers under the Competition Act 1998. All instances related to the Renewables Obligation or smart metering, where section 25 of the Electricity Act 189 requires Ofgem to consider whether the matter should be investigated on the basis of a possible

³⁸ This legislative obligation does not apply to NHSI (as Monitor).

³⁹ Under s.34 of the [Transport Act 2000](#).

⁴⁰ CAA (2020), [CAP2100: Investigation under s.34 of the Transport Act 2000: Project Palamon – Final Decision](#)

⁴¹ Ofcom (2020), [Investigation into BT's conduct during the tender of the NIPSSN contract](#)

⁴² Under the [Gas Act 1986](#) and the [Electricity Act 1989](#).

breach of the Competition Act 1998. Ofgem decided that it was more appropriate to exercise its sectoral powers under the relevant legislation as the issues involved did not raise competition concerns.

58. The FCA, the ORR, and NHSI indicated that there were no cases in which Competition Act 1998 powers could have addressed the relevant concerns such that they needed to consider whether it was more appropriate to proceed by using their competition powers rather than their regulatory powers. The PSR and Ofwat indicated that there were no cases in which the primacy obligation was triggered.

Market studies and market investigations

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

Market studies under the Enterprise Act 2002

Digital Comparison Tools

60. In September 2017, the CMA published its final report following a year-long market study into the use of Digital Comparison Tools (DCTs) by consumers to compare and potentially switch or purchase products or services from a range of businesses. The CMA made a range of recommendations to address concerns, including some specific recommendations addressed to the government, Ofcom, Ofgem and the FCA.⁴³
61. The CMA recommended to the government that intermediaries like DCTs should be brought within regulators' scope in energy and telecoms to allow regulators to enforce more firmly and more quickly, as well as monitor compliance better (and create a level playing field for all firms performing a similar function, ie selling energy or telecom services). In the period of this review, BEIS published its Energy White Paper, in which it commits to ensuring the retail market regulatory framework adequately covers the wider market, including by consulting by spring

⁴³ More information on the CMA's recommendations are available on the CMA's website ([Digital Comparison Tools Market Study](#)). As well as remedy recommendations, the CMA also opened a competition law investigation in relation to one DCT contract with home insurers, which appeared to limit insurers' ability to charge a lower price on one platform than on another ('wide price parity'/most favoured nation clauses) and may result in higher home insurance prices. See paragraphs 29 to 31.

2021 on regulating third parties such as energy brokers and price comparison websites.⁴⁴

62. The following paragraphs provide an update on the progress made by the relevant regulators in implementing the CMA's recommendations.

Ofcom

63. Ofcom has taken a number of steps to take forward the CMA's recommendations of supporting the development of DCTs in telecoms in order to enhance competition and consumer choice.
64. In October 2020, Ofcom published a statement setting out changes to its voluntary accreditation scheme for DCTs to ensure that these continue to work for customers and to ensure the scheme is aligned to the requirements of new European legislation.⁴⁵ The changes provide accredited DCTs with greater flexibility to innovate to meet consumer demand, while remaining subject to high operating standards. The accreditation process has also been simplified, removing some of the more prescriptive requirements. This approach will help ensure the scheme is better able to adapt to a changed digital environment, for example by allowing new ways of presenting search results where that meets customers' needs. The new scheme criteria will take effect from 30 April 2021.
65. Alongside changes to the accreditation scheme, in December 2020, Ofcom also introduced new rules required by European legislation setting out how providers should make available, free of charge and in open data formats, certain information to enable DCTs to operate effectively.⁴⁶
66. In August 2020, Ofcom published a consultation on its Open Communications initiative.⁴⁷ This is an initiative for the retail telecoms and pay TV markets, which would enable people and small businesses to tell their communications provider to share information about their services, easily and securely, with third parties of their choice, such as comparison sites. In the consultation, Ofcom set out its initial thinking on the potential uses and benefits of Open Communications, how it could best work for people and businesses and the associated costs. It expects to publish a statement in the first half of 2021, setting out what it has learned and how it plans to proceed.

⁴⁴ BEIS (2020), *Energy white paper: Powering our net zero future*

⁴⁵ Ofcom (2020), *Statement: Digital Comparison Tools – changes to Ofcom's voluntary accreditation scheme*

⁴⁶ Ofcom (2020), *Statement: Implementation of the new European Electronic Communications Code*

⁴⁷ Ofcom (2020), *Consultation: Open Communications – Enabling people to share data with innovative services*

Ofgem

67. Ofgem has taken a number of steps to address the CMA's market study recommendation of strengthening enforcement powers against DCTs. For example, Ofgem has undertaken work with BEIS on the review of regulation of third parties in the energy sector - including, but not limited to, price comparison services.⁴⁸
68. The CMA's market study also recommended making comparisons easier and more accurate. Related to this recommendation, Ofgem has continued to support smart meter rollout and the development of Midata in conjunction with BEIS, which will make it easier for consumers to use accurate data in comparing energy tariffs. Midata allows consumers to share their consumption data with accredited third parties (either on a one-off basis or with consent for ongoing access) helping to streamline tariff comparison, and Ofgem anticipates that it will enable consumers to use their half-hourly consumption data to make an informed switch to, or between, time of use tariffs.
69. Ofgem expects Midata to evolve and expand with the market over time, as companies devise new ways to help consumers. However, Ofgem's development of Midata has been paused given overlaps with a number of retail market programmes (particularly the Switching Programme and Market-wide Half-Hourly Settlement programme). These will enact or design significant changes to the energy data landscape and will likely provide the basis for a data sharing mechanism which will make comparing energy tariffs easier and more accurate for consumers.

FCA

70. The FCA authorises and regulates DCTs that carry out regulated activities. The FCA has taken steps which seek to address the CMA's recommendations, as well as a number of broader actions in support of consumer choice. In November 2020, the FCA launched its new two-year strategy for the portfolio of DCTs that it supervises.⁴⁹ The FCA's supervision strategy is based on an analysis of firms' strategies, business models, and drivers of culture (including governance arrangements and purpose). The FCA has identified the key harms and drivers of harm including consumers being sold products that do not meet their demands and needs and being unable to access financial services.⁵⁰

⁴⁸ Relatedly, BEIS has committed in the Energy White Paper to consult by spring 2021 on the potential need for greater regulation of third-party intermediaries in the energy sector.

⁴⁹ See FCA (2020), [Supervision strategy for Price Comparison Websites \(PCWs\)](#)

⁵⁰ Others include ineffective governance arrangements and poor culture; poor operational controls; and poorly managed innovation.

71. In addition, DCTs should give consumers sufficient information to allow them to make informed decisions. This includes benefits, exclusions and limitations, as well as other appropriate information about the policies offered. Furthermore, DCTs should understand the products they sell to match them to the appropriate target markets, and to distribute them effectively in a way that meets consumers' needs and achieves good outcomes.
72. The FCA's work on open finance is also relevant. Open finance would extend open banking principles to give consumers greater control of their financial data. This could make it easier for customers to compare price and product features, and switch product or provider. Open finance allows firms to develop services that benefit consumers and businesses, improving competition, financial capability and inclusion. In December 2019, the FCA published a Call for Input on its strategy for open finance.⁵¹ The consultation closed in October 2020 and the FCA published a feedback statement in March 2021.⁵²
73. Finally, in September 2020, the FCA published data from its fourth general insurance value measures pilot.⁵³ The data highlights concerns about the value of personal accident and key cover add-on insurance. Following a consultation launched in January 2019, the FCA published a policy statement in September 2020. This set out rules for firms to report and publish general insurance value measures data, alongside new product governance requirements.⁵⁴

Heat networks

74. The CMA's market study into heat networks - systems that heat multiple homes from a central source - concluded in July 2018. The government responded to the market study in December 2018, accepting the CMA's recommendations that a new regulatory framework should be established to ensure consumer protection for all heat network customers and consulting on high level options for implementation.⁵⁵ The CMA has since been working closely with BEIS, the Scottish government and Ofgem on design and implementation.⁵⁶

⁵¹ FCA (2019), [Call for input: Open finance](#)

⁵² FCA (2021), [Open finance – feedback statement](#)

⁵³ FCA (2020), [General Insurance value measures](#)

⁵⁴ FCA (2020), [General insurance value measures reporting and publication](#)

⁵⁵ BEIS (2018), [Heat Networks: Ensuring Sustained Investment and Protecting Consumers](#)

⁵⁶ In December 2019 – see Scottish Government, [Heat networks working group: recommendations](#).

75. BEIS launched a detailed consultation in February 2020 on policy options for regulating heat networks to protect consumers and ensure fair pricing, while supporting market growth and the development of low-carbon networks.⁵⁷
76. In March 2019, the Scottish government accepted the CMA's recommendations and in March 2020 it introduced the Heat Networks (Scotland) Bill to the Scottish Parliament.⁵⁸ In early 2021, the CMA continued to engage with the Scottish government as the Bill progressed. Furthermore, the CMA participated in the Heat Networks Regulation Group and gave evidence to the Scottish Parliament's Economy Committee. In February 2021, the Heat Networks (Scotland) Bill was passed by the Scottish Parliament, giving effect to a number of the CMA's market study recommendations.

Online advertising and digital platforms market study

77. In July 2020, the CMA concluded its market study into online advertising and digital platforms. The study, which launched in July 2019, involved working closely with Ofcom and the ICO, and looked at how well the markets for search, social media and digital advertising were working and the role of Google and Facebook within them.
78. The study concluded that the inherent characteristics of digital advertising markets (including network effects, consumer behaviour and the role of data) can lead to the market tipping in favour of a small number of players. The resulting lack of competition in those markets gives rise to harms to consumers and businesses, such as reduced innovation in goods and services, higher prices (as the costs of digital advertising are reflected in the prices of goods and services across the economy), and a lack of consumer control, with search and social media markets often characterised by 'take it or leave it' terms that mean consumers have to share their data with platforms to use services.
79. In the market study final report, the CMA called for the development of a pro-competition ex-ante regulatory regime to oversee the activities of online platforms funded by digital advertising. It recommended that the regime comprise two broad categories of intervention:
 - (a) an enforceable code of conduct, intended to protect competition by governing the behaviour of firms with 'strategic market status' (SMS) in order

⁵⁷ This followed the following earlier activity in April 2019 where BEIS published an open letter to network owners and operators encouraging them to improve consumers' experiences ahead of regulation. See BEIS (2019), [Open letter to heat network operators and owners](#).

⁵⁸ Scottish Government (2019), [Energy Efficient Scotland: consultation on further development of the programme](#), page 24; Scottish Parliament (2018), [Official Report](#).

to address the harmful effects that can arise from the exercise of market power, and

(b) a range of pro-competitive interventions, designed to tackle the sources of market power and promote competition and innovation.

80. The CMA also recommended that the government should establish the requirement for a Digital Markets Unit (DMU) to undertake SMS designation and implement and maintain the code of conduct. In addition, the DMU would be given the necessary powers to introduce pro-competitive interventions, such as data-related interventions (including consumer control over data, interoperability and data access powers). The CMA's recommendations built on the proposals for the regulation of online platforms made by the Digital Competition Expert Panel, chaired by Professor Jason Furman, in 2019.⁵⁹

81. In its response to the market study final report, the government accepted the findings of the study and the CMA's recommendations.⁶⁰

Digital Regulation Cooperation Forum

82. Alongside its recommendations in the market study final report, the CMA announced the establishment of a Digital Regulation Cooperation Forum ('DRCF'), comprising the CMA, Ofcom and the ICO, with the FCA becoming a full member from April 2021.⁶¹ The DRCF will support coordination in the regulation of online services and cooperation on areas of mutual importance in order to ensure that synergies and tensions between different policy objectives are effectively managed. The DRCF was formally launched in July 2020 with the following objectives:

(a) Collaborate to advance a coherent regulatory approach by facilitating open dialogue and joint working to ensure that regulation and other enforcement tools applied to the digital landscape are developed and implemented in a coherent way, and produce effective and efficient outcomes that maximise benefits for consumers across policy areas.

⁵⁹ Digital Competition Expert Panel (2019), *Unlocking Digital Competition, Report of the Digital Competition Expert Panel*. Due to its narrower focus on ad-funded platforms, coupled with a longer time frame and strong evidence gathering powers, the market study was able to develop more detailed findings than the Panel and support these with a robust evidence base.

⁶⁰ The government noted the need for careful consideration of the interactions between the powers of the DMU and existing elements of the regulatory landscape, such as Ofcom's role in related markets.

⁶¹ The DRCF will also work with other regulators where this supports regulatory coherence.

- (b) Inform regulatory policy making by using the collective expertise of the DRCF to explore emerging policy challenges in the digital space and develop solutions to inform regulatory approaches.
- (c) Enhance regulatory capabilities by pooling knowledge and resources to ensure that all members have the skills, expertise and tools needed to carry out their functions effectively in digital markets.
- (d) Anticipate future developments by developing a shared understanding of emerging digital trends, to enhance regulator effectiveness and inform strategy.
- (e) Promote innovation by sharing knowledge and experience, including regarding innovation in the approaches of regulators.
- (f) Strengthen international engagement with regulatory bodies to exchange information and share best practice regarding approaches to the regulation of digital markets.

83. In March 2021, the DRCF published its workplan for 2021-22, in which it set out its priorities for this period and the workstreams to achieve these.⁶²

Digital Markets Taskforce

84. In March 2020, following the strategic recommendations made by the Digital Competition Expert Panel and the interim findings of the CMA market study,⁶³ the government asked the CMA to lead a Digital Markets Taskforce to provide advice to the government on the design and implementation of a pro-competition regime for digital markets. Working closely with Ofcom, ICO and the FCA, the CMA published its advice to the government in December 2020.⁶⁴
85. The advice set out detailed proposals for the design of the new regulatory regime to govern the activities of firms with SMS, including the test and process to be applied to the designation of firms as having SMS and the role of the DMU within the regime. The Taskforce also proposed enhancements to the merger rules which would enable the CMA to apply closer scrutiny to transactions involving SMS firms. Alongside its proposals on the SMS regime, the Taskforce made some high-level recommendations with regards to actions needed to drive competition in digital markets more widely, such as action to address unlawful or illegal content and to enable effective consumer choice.

⁶² CMA (2021), [Digital Regulation Cooperation Forum workplan 2021/22](#)

⁶³ CMA (2019), [Online platforms and digital advertising](#)

⁶⁴ CMA (2020), [A new pro-competition regime for digital markets](#)

86. As set out in its recently refreshed Digital Markets Strategy,⁶⁵ the primary focus of the CMA's work in digital markets will now be to establish and operationalise the DMU function and regime within the CMA. Any new powers for the DMU will be subject to legislation and the government has committed to introduce legislation as soon as parliamentary time allows. In the interim, pending new powers, work to establish the DMU will be focused on four strategic aims:
- (a) using the CMA's existing competition, consumer protection, markets and mergers tools to maximum effect to address problems in digital markets;
 - (b) building knowledge and skills to understand digital business models, their opportunities and risks;
 - (c) establishing the regulatory framework and function of the DMU, including by working closely with other regulators such as Ofcom, the ICO and the FCA to ensure coherence across different regulatory regimes; and
 - (d) adapting the CMA's existing tools, including by pursuing legislative reforms with government, to ensure that they remain fit to play an important role in addressing problems in digital markets in the future.

Electric vehicle charging

87. In December 2020, the CMA launched a market study into the electric vehicle (EV) charging sector in the UK.⁶⁶ This is a nascent but fast-growing sector which is important to help support EV take-up and deliver the government's commitment to net zero emissions by 2050.
88. The CMA is focusing on two themes relating to EV charging for passenger vehicles at home, work and publicly across the UK:
- (a) how to develop a competitive sector whilst incentivising investment, including looking at potential barriers for businesses to enter or expand and other factors impacting competition; and
 - (b) how consumers will interact with this new and potentially complex sector, the possible challenges facing people when charging and what additional measures may be needed to protect consumers so that mistrust does not become a barrier to roll-out.

⁶⁵ CMA (2021), *The CMA's Digital Markets Strategy: February 2021 refresh*

⁶⁶ CMA (2020), *Electric vehicle charging market study*

89. In March 2021, the CMA published a progress update on its work which also summarised the key themes and issues raised in responses to its Invitation to Comment.⁶⁷
90. Given the interlinkages between EV charging infrastructure and the UK's electricity network, the CMA is engaging closely with Ofgem, which is sharing its knowledge of regulation and consumer protection in the energy sector, alongside other key stakeholders.
91. The CMA will publish a report setting out its findings on any emerging issues and measures to facilitate effective competition and consumer interaction in the sector later this year.

Ticketing systems

92. In March 2019, the ORR closed its market study setting out three recommendations to tackle the market issues identified in the automatic ticket gates (ATGs) and ticket vending machine (TVMs) markets. The ORR continues to be involved in the implementation of these remedies. The ORR published an update in September 2019 that set out that sound progress had been made against each of the recommendations. It continues to be involved with the implementation of these remedies.⁶⁸

Signalling market study

93. In April 2020, the ORR decided to close the signalling market study launched in January 2020.⁶⁹ It considered that continuing the study would place too great a burden on industry during its initial response to the pandemic and it would be challenging to gather the required evidence to reach a fair and accurate decision by the legal deadline of 26 July 2020.
94. However, in November 2020 the ORR opened a second market study into the signalling market, having satisfied itself that industry was now in a position to cooperate and fully engage.⁷⁰ This new study will consider the concerns that became apparent through its first market study (ie regarding the ability of suppliers to obtain access to interlocking technology, and the barriers to suppliers entering with their own technology), the ability of the supply chain to

⁶⁷ CMA (2021), [Electric vehicle charging market study – progress update](#)

⁶⁸ ORR (2019), [Market study into the supply of automatic ticket gates and ticket vending machines](#)

⁶⁹ Signalling systems are an essential part of the railway, ensuring trains do not come into conflict with each other and playing a key role in freeing up capacity on the congested railway network in Great Britain. Signalling accounted for over £4 billion of Network Rail's spend over the 5-year period between 2014 and 2019.

⁷⁰ ORR (2020), [Market study into the supply of signalling systems – November 2020](#)

build up capacity for the rollout of the digital railway, the incentives to compete in the market⁷¹ and outcomes in the market, with a particular focus on price.

95. The ORR intends to publish its findings and decision on a market investigation reference in May 2021.

Market reviews and other markets work

96. As noted above, certain regulators have also used their sectoral powers to carry out market studies, market reviews and other markets work to deal with competition issues affecting their sectors. This work is summarised for each regulator.

CAA

Manchester Airport Market Power Determination

97. In last year's Annual Concurrency Report, it was reported that the CAA was preparing to commence formally a Market Power Determination relating to Manchester Airport.⁷² In August 2020, the CAA decided to postpone further work and the formal commencement of this Market Power Determination process until at least August 2021 due to the disruption caused by the pandemic.⁷³ The CAA intends to engage with the requesting party, the airport operator and other interested stakeholders before August 2021 to better understand stakeholders' views on this matter at that time.

Ofcom

Wholesale voice calls market review

98. In March 2021, Ofcom published its approach to the regulation of the wholesale voice calls markets that underpin landline and mobile telephone calls in the UK.⁷⁴ Among other things, the Statement sets out Ofcom's decision to continue to cap termination rates for landline and mobile calls made and received in the UK. The Statement also takes into account that the traditional landline telephone network

⁷¹ With a particular focus on: (i) the ability to interface with competitors' technology; (ii) the ability to compete using alternative technology; and (iii) the certainty and future sight of pipeline.

⁷² If the CAA makes a determination that the market power test in the Civil Aviation Act 2012 is met, then the airport operator in question would be subject to economic regulation by means of an economic licence.

⁷³ In reaching this decision, the CAA considered its prioritisation principles and took into account, among other things: the unprecedented impact of the pandemic on the aviation industry; and a request from the requesting party that the CAA postpone the formal commencement of the MPD process. More information on this can be found at CAA (2020), [Airport market power assessment](#).

⁷⁴ Ofcom (2021), [Statement: Wholesale Voice Markets Review 2021-26](#)

in the UK (the public switched telephone network) is coming to the end of its life and is being replaced by a modern Internet Protocol (IP) network. This means, for instance, more of a focus of regulation on the more modern IP interconnection networks.

Wholesale fixed telecoms market review

99. In March 2021, Ofcom published its final Statement setting out its approach to the regulation of the wholesale fixed telecoms markets that underpin broadband, mobile and business connections, for the period April 2021 to March 2026.⁷⁵ These important decisions are designed to promote competition and investment in gigabit-capable networks with the aim of bringing faster, better broadband to people across the UK while at the same time protecting consumers.
100. Ofcom's approach to wholesale price regulation of Openreach is designed to encourage investment in full-fibre networks while providing regulatory certainty around future changes. Openreach remains under an obligation to allow all network operators to lay their fibre network using its telegraph poles and underground ducts, which facilitates competition by reducing the upfront costs of building competing networks. Where fibre has been rolled out, Ofcom will progressively transfer regulation from copper to full fibre to support migration and investment in full fibre services.

Review of telecoms regulation in Hull

101. Following consultation in July 2020, Ofcom intends to publish its final statement in 2021 in relation to the review of telecoms regulation in the Hull area. This review covers all wholesale voice/broadband and leased-line markets in the Hull area.⁷⁶ Ofcom aims to create conditions for improved retail competition in the fixed telecoms markets in the Hull Area through its wholesale regulation of KCOM.

⁷⁵ Ofcom (2021), [Statement: Promoting investment and competition in fibre networks – Wholesale Fixed Telecoms Market Review 2021-26](#)

⁷⁶ Ofcom (2020), [Promoting competition in fibre networks – Hull Area Wholesale Fixed Telecoms Market Review 2021-26](#)

Ofgem

Market review of microbusiness energy market

102. Ofgem commenced its strategic review of the microbusiness energy market⁷⁷ in May 2019.⁷⁸ The market involves the supply of gas and electricity to microbusiness customers (as defined in the Ofgem supply licence conditions). This review continued through the reporting period with a number of stakeholder consultation and engagement activities.
103. The review focuses on the five areas of Ofgem’s customer journey model (aware, browse, contract, dialogue, exit), with the overall aim of enhancing the engagement of microbusiness customers.⁷⁹ At each stage of the customer journey model, Ofgem has explained the practical principles it believes should apply for microbusinesses to effectively engage in the market.⁸⁰
104. Ofgem published a policy consultation on initial proposals for the microbusiness business supply market in July 2020.⁸¹ This consultation closed in October 2020 and Ofgem is currently reviewing responses before publishing final policy proposals in early 2021. Ofgem intends to implement changes during 2021.

Review into whether conditions are in place for effective competition in domestic supply contracts

105. In August 2020, Ofgem published a report on the outcome of its review into whether conditions are in place for effective competition in domestic supply contracts, as required by Section 7 of the Domestic Gas and Electricity (Tariff Cap) Act 2018.⁸²
106. Ofgem concluded that these conditions are not yet in place and recommended retaining the price cap on default and standard variable tariffs the ‘default tariff

⁷⁷ A Microbusiness is defined in the gas and electricity supply licence as: A Non-Domestic Customer: (a) which is a ‘relevant consumer’ (in respect of premises other than domestic premises) for the purposes in article 2(1) of The Gas and Electricity Regulated Providers (Redress Scheme) Order 2008 (S.I. 2008/2268); or (b) which has an annual consumption of gas of not more than 293,000 kWh; or (c) which has an annual consumption of not more than 100,000 kWh electricity.

⁷⁸ Ofgem (2019), [Market review of microbusiness energy market](#)

⁷⁹ See Ofgem (2019), [Strategic Review of the microbusiness retail market](#) for more information.

⁸⁰ Ofgem will map the evidence it collects in the Strategic Review of the Microbusiness market to each stage of the customer journey model. Ofgem will then use the practical principles in its customer journey model to test whether microbusinesses’ experience aligns with its vision for a positive customer experience.

⁸¹ Ofgem (2020), [Microbusiness Strategic Review: Policy Consultation](#)

⁸² Ofgem (2020), [Outcome of review into whether conditions are in place for effective competition in domestic supply contracts](#)

cap' for 2021.⁸³ The Secretary of State considered this review and made a decision in October 2020 to keep the default tariff cap in place.⁸⁴

107. The decision framework sets out three conditions that would need to be in place for there to be effective competition.⁸⁵ Having applied the decision framework during the reporting period, Ofgem's conclusion on each condition was as follows:

- (a) *Condition 1: Structural changes from the government, Ofgem and the wider market are facilitating competition:* Ofgem considers some important progress has been made.⁸⁶ However, the installation of smart meters, has been slower than expected and further limited by the pandemic. Changes in the coming years – such as Ofgem's Faster and More Reliable Switching Programme – are intended to enable greater consumer engagement, confidence and trust in the market and Ofgem believes this will help with progress in meeting this condition.
- (b) *Condition 2: The competitive process should be expected to work well in the absence of the price cap:* Ofgem believes the retail market has become more competitive since the CMA's Energy Market Investigation in 2016. Consumer engagement has increased, with record high rates of switching prior to the pandemic. This trend has driven stronger rivalry between suppliers, with medium-sized suppliers in particular winning and retaining customers from the large incumbents. However, Ofgem remains concerned about the size of the disengaged customer segment, who are more likely to be lower income, and the competitive dynamics that may result if the default tariff cap were lifted. In particular, Ofgem considers it is not clear that, in the absence of the cap, engagement levels across default tariff customers would be sufficient to constrain the price setting of default tariffs.⁸⁷
- (c) *Condition 3: The competitive process should deliver fair outcomes for consumers:* Ofgem expected that the default tariff cap would narrow price differentials between default tariffs and fixed tariffs, because it lowers the price of default tariffs. However, price differentials have not fallen but may

⁸³ Ofgem designed the cap to prevent unjustified price increases and ensure default tariffs reflect more closely the underlying costs of supplying energy.

⁸⁴ This process will be repeated in 2021 and, if needed, for a final time in 2022. The cap will cease to have effect at the end of 2023, at the latest.

⁸⁵ Ofgem (2019), [Framework on conditions for effective competition in domestic supply contracts](#)

⁸⁶ Such as the modification of licensing requirements to ensure that new entrants are able to meet their commitments to consumers who switch to them, while retaining incentives for supplier entry and innovation. The market is also providing innovative ways for consumers to engage directly or indirectly, for example through price comparison websites and automatic switching services.

⁸⁷ While the proportion of households on default tariffs for electricity has fallen by five percentage points since 2016, it remains the case that the majority of households are on these tariffs.

nonetheless be lower than if the cap were absent. There is therefore significant uncertainty on how prices and differentials will evolve post-cap, with little evidence to suggest that households on default tariffs would continue to pay a fair price if the cap were lifted. Ofgem believes that this, in combination with increased pressure on household budgets due to the pandemic, increases the risk of lifting the cap. There is also significant variation in quality of service across suppliers, with customer satisfaction highest among medium sized suppliers, and rising complaints among customers of smaller suppliers. Ofgem considers that this suggests that some of the smaller suppliers may not be adequately prepared and resourced to meet their commitments, and as this is addressed there may be changes to market structure.

FCA

General insurance pricing practices market study

108. The FCA launched its general insurance pricing practices market study in October 2018, as part of a package of work to make general insurance markets work well for consumers. In September 2020, it published the final report which confirmed that home and motor insurance markets are not working well for all consumers.⁸⁸ In particular, the FCA found extensive evidence of some firms gradually increasing the price to customers who renew with them year on year ('price walking').⁸⁹
109. In its final report, the FCA proposed a package of measures to stop firms systematically increasing prices in home and motor insurance for loyal customers in the future. The measures also aim to ensure that firms in the general insurance market focus on providing fair value to all their customers, and to increase trust in general insurance markets. In particular, the FCA proposed a pricing remedy which would require firms to offer a renewal price that is no higher than the equivalent new business price for that customer through the same sales channel.⁹⁰ The consultation on the proposed remedies closed on 25

⁸⁸ FCA (2020), [General insurance pricing practices market study](#)

⁸⁹ In particular, the FCA found that firms are using complex and opaque pricing techniques to identify consumers who are more likely to renew with them, and increasing prices for these customers at renewal resulting in some loyal customers paying very high prices. In addition, some firms use practices that can discourage consumers from shopping around.

⁹⁰ This pricing remedy would be accompanied by enhanced product governance rules to help ensure that firms deliver fair value for all consumers. The CMA notes that the Penrose Report proposed a similar requirement be imposed in all sectors of the economy (see John Penrose MP (2021), [Power to the people: independent report on competition policy](#)). In addition, the FCA set out proposals to ensure that firms make it easy for customers to stop a contract from auto-renewing and to make it easier for consumers to decline auto-renewal for policies, both when they purchase and at renewal.

January 2021. In March 2021, the FCA provided an update stating that firms would have more time to implement any rule changes it might make than it had initially set out in its consultation document. The FCA also noted that it would publish its policy statement along with any proposed rule changes at the end of May 2021.

Credit information market study

110. In June 2019, the FCA launched a market study to examine how the credit information market operates and its impact on consumers, including those who may be vulnerable.⁹¹ The market study focuses on: (i) the purpose, quality and accessibility of credit information; (ii) market structure, business models and competition; and (iii) consumers' engagement and understanding of credit information and how it impacts their behaviour. Owing to the pandemic, this market study has been paused.

Accessing and using wholesale data review

111. In March 2020, the FCA started a review into the use and value of data and advanced analytics in wholesale financial markets.⁹² The FCA wants to better understand how data and advanced analytics are being accessed and used; the value offered to market participants; and whether data is competitively sold and priced. The review focuses particularly on trading data, benchmarks and market data vendors. Owing to the pandemic, the FCA extended the deadline for responding to January 2021 and is currently reviewing the responses received.

Mortgages

112. Following publication of the final report for its mortgages market study in March 2019, in October 2019, the FCA published policy statement setting out new rules that reduce barriers to switching for customers who are up to date with payments.⁹³ The FCA has identified that a number of large and smaller lenders have come forward to offer switching solutions as a result.

113. In July 2020, the FCA published a Statement on Mortgage Prisoners.⁹⁴ This set out the further analysis the FCA carried out on borrowers with inactive firms, including mortgage prisoners, the FCA's interventions and further support

⁹¹ FCA (2019), [MS19/1.1 Credit Information Market Study](#). Credit information is used to help assess the financial standing of consumers and plays a key role in enabling access to a range of financial and non-financial services.

⁹² FCA (2020), [Accessing and using wholesale data – Call for Input](#)

⁹³ FCA (2019), [MS16/2.3, Mortgages Market Study Final Report](#), and FCA (2019), [PS19/27, Changes to mortgage responsible lending rules and guidance – feedback on CP19/14 and final rules](#).

⁹⁴ FCA (2020), [Statement on Mortgage Prisoners](#)

available to these borrowers. The FCA also consulted on a rule-change to make it easier for borrowers in closed books⁹⁵ to be offered a new mortgage with a firm within the same group.⁹⁶ The FCA adopted the new rules in October 2020.⁹⁷

114. In addition, in March 2020, the FCA published research into mortgage switching and how consumers can be encouraged to seek out better deals.⁹⁸ The FCA had expected to issue a consultation paper on potential remedies, but this has been delayed and is subject to the FCA's continuing response to the pandemic.⁹⁹

Investment platforms market study

115. The FCA published its investment platforms market study final report in March 2019. The FCA found that while the market works well overall, there were areas where it could work better to ensure consumers and advisers can shop around and switch easily, at low cost, when another provider better meets their needs.¹⁰⁰ New FCA rules to make moving platforms easier came into force in February 2021.¹⁰¹
116. Alongside these rules, the FCA also announced that it would consult on restricting platform exit fees in Q1 2020.¹⁰² Originally delayed due to the pandemic, the FCA subsequently decided to stop the consultation given a marked shift in the market away from exit fees since 2018, with at least two major platforms announcing they would no longer be charging these fees. The FCA will closely monitor the situation and consult on new rules if market changes lead to harm re-emerging in this area.
117. Finally, in December 2019, the FCA reviewed the progress that firms and industry have made to better enable investors to switch platforms through STAR, an industry initiative.¹⁰³ The FCA intends to carry out its next review of progress in 2022. By then it expects to see the impact of the implementation of standards on the switching progress for consumers and the outcome and impact in the

⁹⁵ Closed' mortgage books are books which are closed to new customers.

⁹⁶ FCA (2020), [CP20/13 Consultation on mortgages: Removing barriers to intra-group switching and helping borrowers with maturing interest-only and part-and-part mortgages](#)

⁹⁷ FCA (2020), [PS20/11 Mortgages: Removing barriers to intra-group switching and helping borrowers with maturing interest-only and part-and-part mortgages](#)

⁹⁸ See FCA (2020), [Mortgage switching research report](#); FCA (2020), [Occasional Paper 54 on the characteristics of consumers who do not switch](#); FCA (2020), [Occasional Paper 55 on brand loyalty in the mortgage market](#).

⁹⁹ See list of delayed publications [here](#).

¹⁰⁰ FCA (2019), [MS17/1.3, Investment Platforms Market Study Final Report](#)

¹⁰¹ FCA (2019), [PS19/29, Making transfers simpler – feedback to CP19/12 and final rules](#). The FCA delayed the implementation of these rules by 6 months in light of the coronavirus pandemic.

¹⁰² FCA (2019), [PS19/29, Making transfers simpler – feedback to CP19/12 and final rules](#)

¹⁰³ FCA (2020), Investment Platforms Market study page. STAR describes itself as delivering a cross-industry framework of good practice for improving consumer experience in moving their money from one financial institution to another. For more information on STAR see the [STAR website](#).

market from the new rules. The FCA also announced in its Final Report that it would review industry's progress in helping consumers access comparable charging information which it expects to do later in 2021.¹⁰⁴

Retirement outcomes review

118. The FCA launched its retirement outcomes review in July 2016. In 2018, it published the final report of this market study, and a consultation on the first tranche of resulting remedies. The first phase of these remedies (measures to improve consumer engagement with retirement income decisions) has been in force since November 2019. The second phase (measures to promote competition by making the cost of being in drawdown¹⁰⁵ clearer and comparison easier) has been in force since 6 April 2020.
119. In July 2019, the FCA published a policy statement setting out the final rules and guidance for the second tranche of remedies.¹⁰⁶ These rules came into effect on 1 February 2021. The rules include measures to help consumers who enter into drawdown without taking advice from a regulated financial adviser,¹⁰⁷ including:
- (a) 'Investment pathways' to provide support for consumers who may otherwise struggle to make investment decisions; and
 - (b) Warnings and prompts to ensure that significant investments in cash (or cash like assets) arise only where the customer has made an informed, active decision to invest this way.
120. The rules also require firms to highlight first year charges to customers (both advised and non-advised) when they enter drawdown or take an income from their pension for the first time. Thereafter, firms must provide information annually on the actual costs and charges paid by the customer, expressed as a single figure in pounds and pence.

Strategic review of retail banking business models

121. The FCA is conducting work to understand the impact of the pandemic and other factors on retail banking business models and on competition in the sector, including personal and SME banking services. As part of this, the FCA has

¹⁰⁴ FCA (2019), [MS17/1.3, Investment Platforms Market Study Final Report](#)

¹⁰⁵ Drawdown enables consumers to take an income from their pension pot without the need to buy an annuity – instead they keep some or all of their funds invested and take an income from those funds.

¹⁰⁶ FCA (2019), [PS19/21, Retirement Outcomes Review: feedback on CP19/5 and our final rules and guidance](#)

¹⁰⁷ For the purpose of pathways, a non-advised drawdown customer is someone who has not received a personal recommendation from a regulated financial adviser in relation to their decision to access their pension via drawdown.

requested financial and operational data from a range of banks to update its 'strategic review' dataset.¹⁰⁸

Motor finance review

122. The FCA launched its review of motor finance in July 2017 and published its final report in March 2019.¹⁰⁹ It found that the way commission arrangements operate in motor finance can cause consumer harm on a potentially significant scale – in particular the use of so-called 'discretionary commission models'.¹¹⁰ In July 2020, the FCA published a policy statement. This confirmed that it would introduce a ban on discretionary commission models alongside minor changes to some rules and guidance to ensure that all credit brokers give consumers more relevant information about their commission arrangements. In the light of consultation feedback and the additional operational pressures which the sector is facing during the pandemic, the FCA gave firms additional time to implement the new rules. The measures came into force in January 2021.¹¹¹

Review of non-workplace pensions

123. The FCA launched its review on whether there is effective competition in non-workplace pensions in February 2018 and published its feedback statement in July 2019.¹¹² It found that limited consumer engagement, combined with complex and confusing products and charges, has led to a lack of competitive pressure in the non-workplace pensions market (which covers £470bn of retirement savings).
124. The paper outlined, and sought feedback on, a package of potential measures to address these issues.¹¹³ The FCA aimed to issue a consultation paper on remedies in 2020 but this has been postponed to the second quarter of 2021 owing to the pandemic.

¹⁰⁸ The FCA launched its strategic review of retail banking business models in May 2017 and published its final report in December 2018. The review aimed to give the FCA a greater understanding of retail banks' business models and the sources of competitive advantage that have helped major banks to keep their market shares in the recent past.

¹⁰⁹ FCA (2019), [Our work on motor finance – final findings](#)

¹¹⁰ Defined as 'where the amount received by the broker is linked to the interest rate that the customer pays and which the broker has the power to set or adjust'. See FCA (2019), CP19/28, [Motor finance discretionary commission models and consumer credit commission disclosure](#).

¹¹¹ FCA (2020), [PS20/8, Motor finance discretionary commission models and consumer credit commission disclosure – feedback on CP19/28 and final rules](#)

¹¹² FCA (2019), [FS19/5, Effective competition in non-workplace pensions](#)

¹¹³ These include measures to: protect consumers who do not or cannot engage with their investment decision; reduce charge complexity; promote charge transparency; and consider ways in which charges can be opened up to external scrutiny.

Cash savings market study

125. Following its July 2018 discussion paper,¹¹⁴ in January 2020 the FCA published a consultation paper setting out proposals to simplify and improve competition in the cash savings market by introducing a Single Easy Access Rate (SEAR).¹¹⁵ The FCA has previously raised concerns that competition is not working well for many of the 40 million consumers who hold either an easy access cash savings account or easy access cash ISA. This is especially the case for longstanding customers whose accounts may pay lower interest rates than those opened more recently.
126. Given the continuing impact of the pandemic and the low-interest rate environment, in November 2020 the FCA decided to stop this work.¹¹⁶ As interest rates for new products fall, so does the gap between rates paid to new and longstanding customers, and the size of the harm falls. The FCA therefore did not consider that introducing the SEAR would be proportionate to the current level of harm in the market. However, the FCA will continue to monitor the market and may revisit its priorities if it sees significant consumer harm in the future.

PSR

Supply of card acquiring services market review

127. The PSR launched a market review in January 2019 into the supply of card-acquiring services in the UK to determine whether the supply of these services is working well for merchants, and ultimately consumers. In September 2020, the PSR published its interim report for consultation.
128. The PSR provisionally found that the supply of card-acquiring services is not working well for small and medium-sized merchants and some large merchants. The provisional findings show that merchants could make savings by shopping around and either switching or negotiating with their current provider – but many small and medium ones do not. The PSR identified three features of concern which – individually and in combination – restrict small and medium-sized

¹¹⁴ FCA (2018), [DP18/6, Price discrimination in the cash savings market](#)

¹¹⁵ FCA (2020), [CP20/1, Introducing a Single Easy Access Rate for cash savings](#). The consultation was due to close in April 2020; due to the impact of the pandemic, the FCA extended the consultation period to 15 December 2020 in order to prioritise urgent work with banks and building societies to help consumers during the pandemic.

¹¹⁶ FCA (2020), [Statement on certain FCA work in light of coronavirus and changing market conditions](#)

merchants' ability and willingness to search and switch.¹¹⁷ The PSR proposed several remedies to make it easier for merchants to search and switch providers.¹¹⁸ The consultation ended in February 2021. The PSR plans to publish the final report later in 2021.

Central payment systems infrastructure provision market review

129. The PSR published its final decision on remedies following its market review into the ownership and competitiveness of central payment systems infrastructure provision in June 2017. One of the remedies – on competitive procurement – required the operators of Bacs and FPS (now Pay.UK for both systems) and LINK to have competitively procured central infrastructure contracts in place by a specified date. The purpose of the competitive procurement remedy was to introduce competition in the market for central infrastructure for Bacs, FPS and LINK for the first time.
130. The LINK procurement was completed in the previous reporting period, and services under the contract will begin in the next reporting period. LINK has indicated it expects the total cost of the infrastructure supporting the LINK network to reduce by a double-digit percentage over the term of the contract (10 years).
131. The payment industry envisages that the existing central infrastructures for Bacs and Faster Payments will be replaced by the New Payments Architecture (NPA). The procurement of the central infrastructure for the NPA is on pause and likely to remain so pending the outcome of the PSR's consultation on the delivery and regulation of the NPA launched in February 2021, which may result in changes to the scope and approach to the procurement. The PSR is currently considering the responses it received on risks to the delivery of the NPA and options for reducing them (including on the scope and approach to the procurement). The deadline for commenting on competition and pricing issues is 5 May 2021.

¹¹⁷ These are: (i) acquirers' and independent sales organisations' (ISO) pricing of card-acquiring services creates significant search costs for merchants because of the absence of published prices and the complexity of comparing prices; (ii) the indefinite duration of merchant contracts for card-acquiring services does not provide a clear trigger point for merchants to think about searching for another provider and switching and, for this reason, is not in merchants' interests. This applies to both acquirer and payment facilitator contracts; and (iii) acquirer and ISO point-of-sale terminal contracts with long initial terms of three to five years or that automatically renew for successive fixed terms represent a barrier to switching to a different provider of card-acquiring services.

¹¹⁸ The PSR does not have concerns about the supply of card-acquiring services to large merchants with annual card turnover above £50 million.

ORR

Delay compensation third party intermediaries market review

132. In November 2018, the ORR launched a market review into delay compensation third party intermediaries (TPIs). These companies act as an interface, or intermediary, between customers¹¹⁹ and train operating companies (TOCs) for the purposes of claims made under passenger delay compensation schemes. They provide passengers with an alternative to claiming directly from TOCs.¹²⁰
133. In June 2020, the ORR consulted on a range of proposals seeking to improve access to delay compensation through amendments to TOC licences, together with an accompanying TPI Code of Practice.
134. The ORR continues to work with industry and governments to produce an optimal outcome for passengers and taxpayers, taking into account the impact of the pandemic on the sector.

DB Cargo disposal of surplus freight locomotives

135. In March 2021, the ORR launched a call for evidence about DB Cargo's policy on disposal of its surplus freight locomotives. It will review whether this policy continues to be necessary and proportionate to address competition issues pertaining to access to locomotives, which it was originally intended to address.¹²¹

Review of rolling stock leasing market remedies

136. In July 2019, the ORR opened a review of the rolling stock leasing market competition remedies put in place by the Competition Commission (CC) in 2009.¹²² These remedies were aimed at improving transparency in the market to promote competition.
137. The purpose of the ORR's review was to determine whether there had been a material change in the market which had led to the alleviation of the competition problems identified by the CC, such that the remedies were no longer appropriate or should be varied to ensure that they remained effective.

¹¹⁹ Most commonly these are individual rail passengers, although some claims companies focus on business customers such as travel management companies.

¹²⁰ As at October 2020, £89m was paid out to customers during 2019-2020, although most potential compensation has historically gone unclaimed.

¹²¹ ORR (2021), [Call for evidence regarding DB Cargo UK Limited's disposal policy](#)

¹²² ORR (2019), [Review of the rolling stock leasing market competition remedies](#)

138. In April 2020,¹²³ the ORR published its decision finding that while there have been significant changes in the market since 2009, the original competition concerns identified by the CC have not been alleviated. The ORR considers that the remedies have provided some benefits and their removal would be detrimental. The ORR therefore concluded that there was insufficient justification for recommending that the CMA undertake a review to assess the merits of revoking or amending the Transparency Order.

Ofwat

State of the business retail market review

139. Since April 2017, 1.2 million business customers in England and large customers using more than 50 megalitres of water per annum in Wales have been able to switch water and sewerage retail providers. In August 2020, Ofwat published its review on how this market is operating, focusing on customer outcomes¹²⁴ and market functioning.¹²⁵ The report also considered whether the market had made progress in resolving the principal market frictions identified in previous reports. These market frictions include inadequate wholesaler performance, poor data quality and cumbersome wholesaler-retailer interactions.

140. Ofwat found that efforts to improve market functioning have accelerated, aided by collaborative leadership from the market operator (MOSL). However, Ofwat found that resolution of market frictions continues to require urgent attention from all trading parties if the improvements seen to date are to gain traction and increase going forward. Other headline findings include: awareness levels of choice have increased;¹²⁶ customer activity levels have been broadly steady;¹²⁷ satisfaction levels remain stable;¹²⁸ complaint levels remain higher than before

¹²³ ORR (2020), [Review of the rolling stock leasing market competition remedies, Outcome of our review into the transparency order for rolling stock companies](#)

¹²⁴ An assessment of the extent to which customers are engaging in and benefiting from the market as well as overall experience and satisfaction with how the market is performing for them.

¹²⁵ An assessment of how the market is operating and, in particular, progress on issues related to the quality of market data, poor wholesaler-retailer interactions and inadequate wholesaler performance.

¹²⁶ 58% of eligible business customers are now aware that they have a choice of retailer, up from 53% in 2018/19. Almost all (96%) large customers are now aware of this.

¹²⁷ Just under 8% of eligible customers were active in the last 12 months rising to 16% of larger SME customers (50-249 employees) and 26% of large customers (250+ employees). The annual rate of switching and/or re-negotiating remains at around 4%.

¹²⁸ With 78% of customers reporting they are satisfied with their current provider.

market opening but are falling;¹²⁹ and new entrants are acquiring more customers.¹³⁰

Review of incumbent support for effective markets

141. In August 2020, Ofwat published the outcomes following its review of incumbent support for effective markets (RISE).¹³¹ The review focused on two markets: the Business Retail market¹³² and the Developer Services market. The Developer Services market is broadly split into two sub-markets: the New Appointments and Variations (NAV) market¹³³ and the Connections market.¹³⁴
142. Ofwat has found that there is room for incumbent companies to play a more active role in supporting the Business Retail and Developer Services markets. In addition, there are differences between companies and within companies in their approach to supporting markets, with some companies performing much better than others. While collaboration can support markets and so benefit customers, the review found that too many water companies are incorrectly using competition law as a reason not to collaborate or as a reason not to be more responsive to the needs and specific circumstances of individual market participants.
143. The review concluded that too few companies embrace markets and their role in helping to address strategic issues facing the water sector. Ofwat concluded that water companies need greater commitment at senior/board level to support these markets and to do so in a way that goes beyond compliance.
144. Ofwat will use the information gathered and review findings to monitor both the sector overall and individual companies with respect to the markets considered. For the Business Retail market, examples of next steps include Ofwat continuing to support MOSL in reforming the current Market Performance Framework, and supporting work to improve the current model of industry-led governance and decision making.¹³⁵ For the Developer Service market, Ofwat expects

¹²⁹ Complaints recorded by the Consumer Council for Water ('CCW') have fallen. However, where customers are dissatisfied or lodge complaints, the main issues remain customer service and problems with billing.

¹³⁰ At the end of year three, new entrants (those who entered the market without acquiring a customer base from the previous monopoly incumbents) are gaining around 1% market share per year.

¹³¹ Ofwat (2020), [Review of incumbent company support for effective markets](#). This publication was delayed due to the pandemic.

¹³² Business Retail refers to the competitive non-household water sector.

¹³³ Competition for the market, a NAV is a limited company appointed by Ofwat that becomes the monopoly provider of water and/or sewerage services for a specific geographic area, usually a new housing development.

¹³⁴ The Connections market is a market where a housing developer can either choose the incumbent water or sewerage company to install pipework or choose their own contractor to do the work, known as a Self-Lay Provider (SLP).

¹³⁵ For a full list of actions taken by Ofwat, see section 6 of Ofwat (2020), [Review of incumbent company support for effective markets](#).

incumbents to focus on industry changes such as learning points from D-MeX¹³⁶ and new asset adoption model agreements and guidance. In addition, Ofwat will require greater assurance that companies are setting charges for new connections that reflect underlying costs.

NIAUR

Review of the Northern Ireland energy retail market - A State of the Market Assessment

145. In July 2020, NIAUR launched a review of the Northern Ireland energy retail market, following a delay caused by the pandemic. This review examines the context to the regulatory approach to retail market regulation and also provides relevant information on the developments of competition in the electricity and gas retail markets.
146. In 2021, NIAUR plans to publish a paper that is intended to be background to, and a precursor of, ongoing and further work to ensure its general regulatory approach to retail market regulation remains valid and up-to-date, and in particular that its approach to regulating end prices for the majority of consumers remains valid.

CMA

'Loyalty penalty' super-complaint

147. In September 2018, Citizens Advice submitted a super-complaint to the CMA, raising concerns that longstanding customers were paying more than new customers (a 'loyalty penalty') in five essential markets:
- (a) cash savings, home insurance and mortgages – regulated by the FCA; and
 - (b) mobile and broadband – regulated by Ofcom.
148. The CMA published its response in December 2018.¹³⁷ The investigation found that a substantial loyalty penalty is paid by millions of consumers each year, with vulnerable consumers¹³⁸ more likely to pay a loyalty penalty as they can face

¹³⁶ D-MeX, the developer services measure of experience, is designed to incentivise water companies to provide an excellent customer experience to developer services customers, including small and large property developers, self-lay providers and those with new appointments and variations (NAV's). These customers can also include residential customers who have new mains connections installed. D-MeX comprises a qualitative element which is a survey of developer services customers who have recently completed a transaction with their water company and a quantitative element which measures performance against a set of Water UK developer services level of service metrics.

¹³⁷ CMA (2018), *'Loyalty penalty' super-complaint*

¹³⁸ Such as those on low incomes, or the elderly.

additional challenges to switching providers or negotiating deals. The FCA and Ofcom estimate that in total more than 28 million customers were paying a loyalty penalty of £3.4 billion.¹³⁹

149. Since the CMA's review both the FCA and Ofcom have undertaken substantial further work to look at this problem in more detail (as set out further below).
150. During this reporting period, the CMA published two updates on progress in July and December 2020, with the latter considering progress in the two years since the original investigation.¹⁴⁰ The December 2020 update included the publication of a review by E.CA Economics, commissioned by the CMA, looking into the academic literature on the loyalty penalty, to help identify potential gaps in understanding within economic theory and to consider how this might inform policy thinking on tackling these issues.
151. The CMA considers that progress has been made in each of the five markets. Steps have been taken to tackle the issues (despite regulators having to switch focus to dealing with the pandemic) and both the FCA and Ofcom have over the past two years put in place or proposed measures to address the concerns.
152. For example, the FCA has completed its market study in general insurance and proposed a package of robust remedies to tackle the problems found in this sector, including banning price walking (see paragraph 109), which the CMA strongly welcomes. In mortgages, as well as carrying out research into customers that can switch but do not, the FCA has been looking into the issues faced by mortgage prisoners. The FCA has published proposals to make it easier for this group of consumers to switch mortgage providers (see paragraph 113). More generally, the FCA has published a Call for Input on open finance and published a feedback statement in March 2021 (see paragraph 72). Open finance aims to increase consumers' access to information about their financial products – making it easier for customers to compare price and product features, and switch product or provider.
153. Ofcom has taken a number of steps to address broadband price differentials. In July 2020, it published its updated review of pricing practices in fixed broadband.¹⁴¹ This found that out-of-contract broadband customers (around 40% of customers) continued to pay higher prices and that the estimated price differential these customers pay was just under £500 million a year compared to the average price for the same service from the same provider. Ofcom has

¹³⁹ Estimate taken from combined published figures from FCA and Ofcom's work in the five markets in 2019 and 2020; we recognise that there may be instances where customers are paying a loyalty penalty in more than one market and therefore may be counted twice or more. See CMA (2020), [Loyalty penalty December 2020 update](#).

¹⁴⁰ See CMA (2018), ['Loyalty penalty' super-complaint](#)

¹⁴¹ Ofcom (2020), [Review of pricing practices in fixed broadband](#)

secured a range of commitments from all major providers to protect out-of-contract customers, including securing revisions to their pricing policies,¹⁴² and conducting annual pricing reviews for vulnerable customers.¹⁴³

154. Ofcom has also taken steps to protect mobile and broadband customers, including introducing new rules requiring customers to be notified that their contract is coming to an end and to be shown the best deals available, and securing voluntary commitments from all major mobile providers, except Three, to reduce charges for out-of-contract customers. Ofcom also recently consulted on proposals to introduce Open Communications in telecoms and pay-TV which would allow consumers and small businesses to safely share their data with a third party, to help them to get a better deal suited to their needs/usage.
155. As set out in its December 2020 update, the CMA considers that while work is in progress and some interventions are yet to be implemented, the direction and commitment of regulators to addressing the issues is clear. The CMA supports and encourages the regulators to continue to take tough action where needed and to closely monitor the impacts in tackling the loyalty penalty.
156. The CMA will continue to use the powers it has to protect consumers from exploitative practices linked to the loyalty penalty.¹⁴⁴ We believe the CMA's powers could be strengthened to enable us to take action more effectively, including through new powers to fine businesses who have broken consumer law directly. Consumer law on harmful practices relating to autorenewals and subscription services can also be clarified even further. The CMA is committed to continuing to work with government and others to ensure the competition regime and consumer law is robust to tackle the problems arising in markets.
157. We also note that BEIS stated in December 2020 that as part of its efforts to make the energy retail market more competitive, it will offer people a simple method of switching to a cheaper energy tariff and will test automatically switching consumers to fairer deals.¹⁴⁵

Follow-up to previous market investigations

158. The following market investigations have all completed before the beginning of the relevant reporting period, and no new market investigations in the regulated

¹⁴² Such as reducing the difference between out-of-contract and new customer prices and free upgrades. Ofcom estimates this could secure benefits to out-of-contract customers of over £270 million a year.

¹⁴³ Ofcom estimates this could benefit around 1 million vulnerable out-of-contract customers by an average of around £70 each.

¹⁴⁴ For examples of action taken by the CMA on unfair subscription renewals, see CMA (2018), [Anti-virus software](#) and CMA (2019), [Online console video gaming](#).

¹⁴⁵ BEIS (2020), [Energy white paper: Powering our net zero future](#)

sectors have been launched during that time. The remainder of this section sets out the follow-up work that has been conducted in relation to these market investigations during this period.

Investment consultants market investigation

159. The CMA's final report of its investigation into the supply and acquisition of investment consultancy services and fiduciary management services to and by institutional investors and employers in the UK was published in December 2018.¹⁴⁶
160. The Investment Consultancy and Fiduciary Management Market Investigation Order 2019 (the Order), made and published in June 2019, gave effect to the CMA's remedies as regards the conduct of firms and pension scheme trustees.¹⁴⁷
161. The CMA worked closely with the FCA, DWP and the Pensions Regulator in the remedy design and implementation phase leading up to the Order and continues to do so in relation to the transposition of the Order into the relevant sector-specific regulatory regimes. However, the transposition of the Order has been delayed. Until the FCA, DWP and the Pensions Regulator are in a position to transpose the Order into their regulatory regimes, the CMA continues to monitor and enforce the Order.
162. The first compliance statements were received in January 2021. The CMA received in excess of 6,000 compliance statements from both investment consultancy and fiduciary management providers, as well as pension scheme trustees.
163. When the sector-specific rules and regulations come into force, the provisions of the Order will cease to have effect. This so-called 'sunset' of the Order may happen in stages, as and when the rules and regulations come into force within each regulatory regime.

Retail banking market investigation

164. The CMA's market investigation into the supply of retail banking services to PCA customers and to SMEs in the UK concluded in August 2016.¹⁴⁸ The CMA

¹⁴⁶ The [investment consultants market investigation](#) was launched in 2017 following a reference from the FCA.

¹⁴⁷ More information is available on the CMA's website [here](#). The Order came into force in December 2019.

¹⁴⁸ [Retail banking market investigation](#) launched in November 2014. In relation to personal customers, the terms of reference included only the supply of PCAs, which includes overdrafts. In relation to SMEs, the terms of reference were broader; they included business current accounts and lending products, but they excluded insurance, merchant acquiring, hedging and foreign exchange.

imposed a package of measures designed to address the adverse effects on competition that were identified, to ensure banks work harder for customers and to ensure that the benefits of new technology are fully exploited.

165. All elements of the CMA's remedies package are now in place and key developments are set out in the following paragraphs.
166. The implementation phase of Open Banking¹⁴⁹ continued, although following consultation, the Open Banking Implementation Trustee¹⁵⁰ has set out a revised timetable and second review of timing for implementation owing to the disruption caused by the pandemic.¹⁵¹ The revised timetable indicates that, subject to the outcome of evaluation and consultation exercises, the Open Banking Implementation Entity¹⁵² will deliver its final standards by the end of Q2 2021.
167. The CMA therefore consulted on what arrangements should be put in place after the completion of the implementation phase and as part of its consideration has engaged with the UK Finance Open Banking Futures project.¹⁵³ To ensure that assets assembled for Open Banking could, if necessary, be repurposed to support open finance¹⁵⁴ and the BEIS Smart Data project,¹⁵⁵ the CMA has continued close bilateral discussions with the FCA and BEIS.
168. As set out in the last reporting period, in 2019 the CMA undertook a review of Part 6 of the Retail Banking Market Investigation Order 2017 (Part 6). Under Part 6, banks and building societies are required to alert customers when they enter into an unarranged overdraft, so that customers can avoid or reduce unarranged overdraft charges. Following new rules introduced by the FCA, which took effect in December 2019 and replicate the CMA's requirements, the CMA decided to remove Part 6 requirements from the Order. The FCA now has responsibility for monitoring banks compliance with alerts.¹⁵⁶
169. However, the CMA remained responsible for enforcing compliance during this reporting period. During this period, CMA investigations resulted in publishing letters to the Royal Bank of Scotland Group¹⁵⁷ and Metro Bank¹⁵⁸ detailing the

¹⁴⁹ A remedy put in place to improve competition in the retail banking sector. In particular to ensure customers benefit from the emergency of new innovative products, and ensure that new entrants and smaller providers in the UK retail banking sector are able to compete more fairly.

¹⁵⁰ Imran Gulamhuseinwala is the Implementation Trustee for the CMA's Open Banking remedies.

¹⁵¹ This new timetable was agreed in May 2020. See CMA (2020), [Retail Banking Market Investigation Order 2017, Notice of approval of changes to the Agreed Timetable and Project Plan](#).

¹⁵² Responsible for delivering Open Banking.

¹⁵³ CMA (2021), [Future oversight of the CMA's open banking remedies](#)

¹⁵⁴ See paragraph 72 for more details.

¹⁵⁵ See BEIS (2020), [Smart data: putting consumers in control of their data and enabling innovation](#)

¹⁵⁶ See CMA (2019), [Review of Part 6 of the Retail Banking Market Investigation Order 2017](#)

¹⁵⁷ CMA (2020), [Letter to RBSG on 2 Breaches of the Retail Banking Order](#)

¹⁵⁸ CMA (2020), [Letter to Metro Bank on breaches of the Retail Banking Order](#)

nature of their breaches. Over £47m in charges are being refunded to customers as a result of the CMA's stewardship of Alerts between February 2018 until December 2019.¹⁵⁹

Energy market investigation

170. The CMA's energy market investigation, which followed a reference by Ofgem and concluded in June 2016, resulted in a package of remedies including 26 recommendations to Ofgem. These remedies were aimed at making competition in the market more effective and were expected to have market-wide implications and to enhance competition. Most significantly, the remedies aimed to increase consumer activity and engagement, and therefore put additional pressure on energy retailers to compete vigorously for customers.
171. As noted in paragraph 106, following consultation, Ofgem decided in August 2020 to protect default tariff prepayment customers through the default tariff cap once the premature replacement charge expires.¹⁶⁰ Ofgem introduced a prepayment level to the default tariff charge that reflects the costs of supplying prepayment customers. The prepayment level of the default tariff came into effect on 1 January 2021 following the expiry of the CMA's Energy Market Investigation Prepayment Charge Restriction Order¹⁶¹ at the end of 2020.
172. In October 2020, Ofgem published its findings from the sustained engagement project which sought to assess whether collective switch interventions had a lasting or sustained impact on tariff switching.¹⁶² Based on an analysis of the post-trial switching behaviour of participants from the first Collective Switch trial, 're-prompting' consumers at their tariff end dates is vital to maximise the sustained impact of a collective switch intervention.
173. Ofgem considers that the default tariff price cap currently protects consumers on default tariffs ensuring that suppliers charge households a fair price for their electricity and gas. Furthermore, the price cap is intended to be a temporary

¹⁵⁹ As reported in CMA (2020), [Press Release: 47m in overdraft refunds to bank customers after CMA action](#).

¹⁶⁰ The premature replacement charge represents the charge incurred by a supplier when it removes a traditional meter before the end of its rental life.

¹⁶¹ The Energy Market Investigation (Prepayment Charge Restriction) Order 2016 (the Order) established the Prepayment Charge Restriction (PCR). The aims of which were: (i) reducing customer detriment from high process by reducing prices paid by prepayment customers; (ii) allowing a notational efficient supplier in a steady state to earn a normal rate of return; and (iii) allowing for competition to develop among prepayment suppliers below the level of the prepayment charge restriction.

¹⁶² Ofgem (2020), [Prompting sustained engagement in energy tariff switching](#). As noted in last year's report, in 2019 Ofgem completed a series of engagement trials looking at how to prompt engagement in energy tariff switching. The Collective Switch trials were a subset of these trials, comprising five trials that demonstrated that a collective switch intervention was effective in increasing one-off switching among customers who had been on a default tariff for 3 years or more.

measure to ensure prices reflect underlying energy costs while longer-term reforms, such as smart metering, are rolled out to ensure fairer energy prices in the future. Given the success of the collective switch trials, Ofgem considers that similar interventions might have a role to play as part of a range of measures once the price cap ends.¹⁶³ The CMA notes that BEIS is planning legislation to give Ofgem further powers to implement collective switching.¹⁶⁴

174. The CMA notes that the implementation of the CMA's remedies has now largely been completed, with the CMA's time-limited charge restriction for pre-payment meter customers having been replaced by Ofgem's default tariff cap in January 2021. Ofgem is focused on a number of on-going programmes which seek to enhance consumer engagement in the market, and is also examining ways to improve competition for microbusinesses. Some changes to the CMA's remedies in support of these developments may be needed in 2021.

General cooperation

175. The CMA and regulators have continued to cooperate more generally, in line with the practical arrangements set out in the Concurrency Regulations,¹⁶⁵ the Concurrency Guidance¹⁶⁶ and the bilateral Memoranda of Understanding agreed between the CMA and each of the sector regulators.¹⁶⁷

Information-sharing

176. In line with previous years, the CMA and the sector regulators have continued during the period of this report to exchange key information and comments in respect of the particular cases that they have been investigating, including emerging thinking and draft decisions, as provided for in Regulation 9 of the Concurrency Regulations and the Memoranda of Understanding. Additionally, and as in previous years, the CMA and the sector regulators have augmented the prescribed information-sharing process with more informal discussions and the sharing of know-how and relevant expertise.

¹⁶³ We note that in December 2020 BEIS announced the introduction of opt-in switching and testing opt-out switching. See BEIS (2020), *Energy white paper: Powering our net zero future* for further detail.

¹⁶⁴ BEIS (2020), *Government sets out plans for clean energy system and green jobs boom to build back greener*.

¹⁶⁵ Competition Act 1998 (Concurrency) Regulations 2014.

¹⁶⁶ CMA (2014), *CMA10: Regulated Industries: Guidance on concurrent application of competition law to regulated industries*

¹⁶⁷ The Memoranda of Understandings with the concurrent competition regulators can be found on the [CMA's website](#).

Case allocation

177. Since April 2020, one new Competition Act 1998 case was allocated to the FCA, one case was allocated to the ORR and one case was allocated to the CMA. The CMA and the regulators have engaged in constructive discussions on the allocation of concurrent cases, resulting in agreement having been reached in each case in accordance with the Concurrency Regulations. As observed in previous reports, case allocation permits the CMA and the respective regulator to use their complementary resources on cases to good effect and to ensure that cases are undertaken by the authority best placed to do so.

Assistance on casework

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

Assistance on competition enforcement work

179. The CMA and the regulators continue to provide each other with assistance on their respective Competition Act 1998 investigations in the regulated sectors. In particular, the CMA has provided those regulators undertaking cases with relevant procedural advice and practical assistance. Examples include advice on how to carry out oral hearings remotely (to account for the pandemic), access to file, the use of hybrid settlements, commitments, evidence gathering (including keyword IT searches and digital forensic support), and dealing with witness evidence.

180. The regulators themselves have provided the CMA and each other with sector specific expertise on relevant cases. For example, the CAA has assisted with the CMA's investigation of the Atlantic Joint Business Agreement,¹⁶⁸ and the FCA provided assistance with the CMA's investigation into Compare the Market's use of MFN clauses.¹⁶⁹ The FCA and PSR also provided assistance to Ofgem's

¹⁶⁸ CMA (2018), [Investigation of the Atlantic Joint Business Agreement](#)

¹⁶⁹ CMA (2017), [Price comparison website: use of most favoured nation clauses](#)

Chapter II investigation into conduct by PayPoint in the market for the provision of over-the-counter top-up services to prepayment energy customers.¹⁷⁰

Assistance on markets work

181. During this period, the FCA and Ofcom provided assistance to the CMA's Digital Markets Taskforce and the NIAUR engaged with Ofgem during the development of the new gas transmission charging mechanism to understand the impact of these changes on Northern Ireland and the All Island wholesale market.
182. The CMA also provided advice to regulators on various relevant procedural issues, such as on organising confidentiality rings and on the design of remedies.

Assistance on mergers work

183. The CMA has continued to receive valuable input and assistance from the regulators when investigating mergers involving the regulated sectors. This is testament to the strong working relationship the CMA has built with the regulators. Reviewing mergers is an important function performed by the CMA as the national competition authority and although mergers do not fall within the scope of concurrency, many involved the regulated sectors.

Aviation

184. The CAA assisted the CMA in the Phase 2 investigation of the acquisition by Sabre Holdings Corporation of Farelogix Inc.¹⁷¹

Communications

185. The CMA worked closely with Ofcom and benefitted from its expertise in the telecommunications markets during its Phase 2 investigation into the joint venture between Liberty Global plc and Telefónica S.A to merge their UK operating businesses (Virgin Media/Virgin Mobile and O2, respectively).¹⁷²
186. Ofcom was also consulted in relation to the acquisition by Sinch Holding AB of the SAP Digital Interconnect Unit¹⁷³ and Cellnex UK Limited's acquisition of Arqiva Services Limited¹⁷⁴, and continued to provide sector expertise during the

¹⁷⁰ Ofgem (2017), [Investigation into whether PayPoint plc has infringed the requirements of Chapter II of the Competition Act 1998](#)

¹⁷¹ CMA (2019), [Sabre/Farelogix merger inquiry](#)

¹⁷² CMA (2020), [Liberty Global plc / Telefónica S.A. merger inquiry](#)

¹⁷³ CMA (2020), [Sinch Holding AB / SAP Digital Interconnect Unit from SAP SE merger inquiry](#)

¹⁷⁴ CMA (2020), [Cellnex UK Limited/Arqiva Services Limited merger inquiry](#)

CMA's remedies process following the Bauer Media Group merger Phase 2 investigations.¹⁷⁵

Financial services

187. The FCA assisted the CMA's understanding of the investment platforms sector and FNZ's regulated activities in the CMA's investigation of the completed acquisition of GBST Holdings Limited by FNZ (Australia) Bidco Pty Ltd,¹⁷⁶ and also shared its sector knowledge and expertise in the CMA's investigation into the anticipated merger between Crowdcube Limited and Seedrs Limited,¹⁷⁷ the acquisition by Visa International Service Association of Plaid Inc¹⁷⁸ and the acquisition by Ardonagh Group Limited of Bennetts Motorcycling Services Limited (which involved insurance).¹⁷⁹
188. The FCA also helped the CMA provide assistance to the European Commission in its investigation into the acquisition of Refinitiv by London Stock Exchange Group.

Payment systems

189. The PSR provided payments systems expertise to the CMA for its investigation into the acquisition by Visa International Service Association of Plaid Inc¹⁸⁰ and for the investigation into the acquisition by Mastercard Incorporated of parts of Nets A/S.¹⁸¹

Healthcare

190. NHSI 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 specific submissions made in response to the CMA's investigation into the anticipated merger of Royal Bournemouth and Christchurch Hospitals NHS Foundation Trust and Poole Hospital NHS Foundation Trust.¹⁸² NHSI was also consulted in the

¹⁷⁵ CMA (2019), [Bauer Media Group merger inquiry](#)

¹⁷⁶ CMA (2019), [FNZ/GBST merger inquiry](#)

¹⁷⁷ CMA (2020), [Crowdcube/Seedrs merger inquiry](#)

¹⁷⁸ CMA (2020), [Visa International Service Association / Plaid Inc. merger inquiry](#)

¹⁷⁹ CMA (2020), [Ardonagh Group/Bennetts Motorcycling Services merger inquiry](#)

¹⁸⁰ CMA (2020), [Visa International Service Association / Plaid Inc. merger inquiry](#)

¹⁸¹ CMA (2020), [Mastercard/Nets merger inquiry](#)

¹⁸² CMA (2020), [Royal Bournemouth and Christchurch Hospitals NHS Foundation Trust / Poole Hospital NHS Foundation Trust merger inquiry](#)

investigation in the acquisition by Circle Health Holdings Limited of GHG Healthcare Holdings Limited.¹⁸³

Multilateral cooperation

191. In addition to the regular bilateral meetings that the CMA holds with the sector regulators, valuable cooperation occurs multi-laterally through the UKCN.¹⁸⁴ This cooperation has an important function in ensuring consistency in the application of the competition regime but also in facilitating the sharing of best practice and knowledge.
192. To develop and ensure consistency in the enforcement of the competition framework, the UKCN is often used by the CMA and sector regulators to hold ongoing discussions and presentations based on their experiences of specific issues from their competition work. Some examples of topics covered this year include: a roundtable on issues arising from the pandemic; a presentation from the Department for International Trade on the impact of future trade agreements on competition enforcement; presentations from the CMA on competition policy and sustainability, the Multilateral Mutual Assistance and Cooperation Framework for Competition Authorities, competition policy reform, and IT processes in Competition Act 1998 investigations; and a range of presentations from the CMA and regulators on many of the investigations and markets work set out in this report.
193. Secondments continue to be an important way of sharing expertise and transferring knowledge between the CMA and the sector regulators. During the period of this report, there were approximately 20 secondments between regulators and between the regulators and the CMA.¹⁸⁵

UK's withdrawal from the EU and the end of the Transition Period

194. The CMA and regulators have worked hard to ensure that the competition and concurrency regimes remain resilient and effective following the UK's withdrawal from the EU on 31 January 2020.

¹⁸³ CMA (2019), [Circle Health/BMI Healthcare merger inquiry](#)

¹⁸⁴ The mission of the UKCN is to promote competition for the benefit of consumers and to promote anti-competitive behaviour, both through facilitating the use of competition powers and the development of pro-competitive regulatory frameworks.

¹⁸⁵ Numbers reflect formal competition-related secondments and may not capture additional, informal secondments that may have taken place during the period.

195. The CMA continued to liaise with and update the regulators (principally through the UKCN) on relevant developments such as legislation to implement the Withdrawal Agreement, progress in free trade negotiations, the passing of the UK Internal Market Act 2020 and plans for the establishment of the Office of the Internal Market within the CMA. The CMA has also briefed the regulators on other interactions with the government and broader readiness preparations, including on how to deal with cases opened by the competition authorities prior to the end of the Transition Period that seek to enforce Articles 101 and 102 in addition to Chapters I and II under the Competition Act 1998.
196. In December 2020, the CMA published guidance on how competition enforcement will be undertaken following the end of the Transition Period. In particular, this covered the practical implications of Articles 101 and 102 of the TFEU ceasing to apply and set out that the European Commission will be able to continue with the UK element of on-going cases initiated before the end of the Transition Period.¹⁸⁶ Leaving the EU will have wider implications across the economy, which in turn will affect competition in many markets. Going forward, UK competition authorities are likely to deal with a higher number of cases involving more complex issues (and involving multinational companies), particularly in the financial services and telecoms sectors.
197. The regulators have also taken steps to ensure that their respective sectors are prepared from the end of the Transition Period, continuing to engage with the UK government, the EU and each other where appropriate to ensure that their sectors can function effectively, and that competition can thrive. Specific examples include:
- (a) NHSI working closely with Department of Health and Social Care to advise on the impact on medicines supply, workforce issues, reciprocal healthcare, and procurement
 - (b) NIAUR engaged with the Gas Market Operator Northern Ireland on modifications to the Network Gas Transmission Code, REMIT¹⁸⁷ reporting, and future interaction with the European Network for Transmission System Operators for Gas and other issues needed to maintain the all-island electricity market
 - (c) Ofgem consulted on licence modifications to ensure they remain fit for purpose, supported Code Administrators and panels with their preparations for the end of the Transition Period, approved modifications to various

¹⁸⁶ CMA (2020), [Guidance on the functions of the CMA after the end of the Transition Period](#)

¹⁸⁷ Regulation on Wholesale Energy Market Integrity and Transparency.

access rules for energy trading, and put in place new arrangements to the operation of REMIT in the UK.¹⁸⁸

- (d) The CAA prepared itself to take on a number of new responsibilities previously delivered by the EU and EU institutions, including enforcement of a code of practice on Computer Reservation Systems and a role in investigating third-country practices distorting competition that cause injury (or threat of injury) to UK airlines. The CAA continues to engage with stakeholders across the UK aviation and aerospace sectors on the regulatory conditions that exist now the UK is outside of the EU, and how they are able to operate and remain compliant within newly separated EU and UK regulatory systems.

Coronavirus (COVID-19)

198. The pandemic has had a major impact across the UK economy, including the regulated sectors. As well as competition concerns such as price gouging, the decline in economic activity over the lockdown period has had wider repercussions for the continued state of competition of the economy.¹⁸⁹ In particular, vulnerable consumers may be in need of greater assistance and protection (the CMA's State of Competition report found that, for example, there appeared to be a greater reduction in shopping around among vulnerable consumers).¹⁹⁰
199. Another impact was that both regulators and those being investigated faced, at short notice, sudden resource constraints (both as a result of having to focus on new pandemic related issues and dealing with staff unavailability). As a result and as noted in this report, a number of regulators had to delay, postpone, or prematurely bring to an end work.¹⁹¹ As can be seen, some of the delays were only short-term and, despite constraints, regulators and the CMA have continued to make progress and deliver across a wide range of projects and enforcement action.

¹⁸⁸ Ofgem (2020), [EU exit REMIT contingency arrangements – October 2020 update](#)

¹⁸⁹ And the whole economy – the CMA's [state of competition report](#) considered the impact of the pandemic on competition as a whole, and found, for example, reduced shopping around and reduced business expansion plans. Both of these indicate reduced competitive pressure now and in the future.

¹⁹⁰ CMA (2020), [State of UK competition report](#)

¹⁹¹ In addition, In March 2020, Ofcom suspended all existing consultation deadlines and information requests, putting on hold any new ones (see Ofcom (2020), [Ofcom information on the coronavirus \(Covid-19\)](#)) before revising its 2020/21 workplan in June 2020. The FCA has set out all its affected activities at FCA (2020), [Coronavirus \(Covid-19\): delayed activities and regulatory change](#).

200. There were also broader issues raised by the pandemic to which the CMA and regulators had to respond (and, to which, as noted, they had to devote resources).
201. The CMA provided advice to the government on how to ensure competition law did not stand in the way of legitimate measures to protect public health and support the supply of essential goods and services, and to ensure markets functioned as well as possible during the pandemic. In particular, the CMA advised the government on the introduction of exclusion orders in key sectors of the economy. These orders relaxed UK competition rules to agreements that might otherwise be considered anti-competitive (and thus an infringement of the Chapter I prohibition), and were introduced for groceries, dairy produce, Solent maritime crossings, and health services in England and Wales.¹⁹²
202. The CMA also published guidance to assist all UK businesses where they found it necessary to coordinate with competitors to ensure continued supply or otherwise assist with national and local efforts to tackle the pandemic.¹⁹³ The CMA additionally set up a dedicated taskforce to deal with issues thrown up by the pandemic, including price gouging¹⁹⁴ and cancellations and refunds issues. The CMA also advised the government on legislative options for dealing with price gouging, and itself opened four Competition Act 1998 investigations into suspected excessive and unfair pricing of hand sanitiser.¹⁹⁵
203. The sector regulators themselves undertook a range of activities aimed at ensuring consumers were protected and that firms in their sectors could continue to operate, notably in the face of collapses in revenues for businesses in their sectors as economic activity paused. In particular, a number of regulatory requirements assume a certain level of revenues on the part of regulated entities, and without flexibility such as a relaxation of the requirements, this could contribute to the failure of certain businesses (with all that implies for competition in markets going forward).
204. Some examples of work undertaken by the regulators includes:

¹⁹² See BEIS (2020), [Competition law exclusion orders relating to coronavirus \(COVID-19\)](#)

¹⁹³ CMA (2020), [CMA approach to business cooperation in response to coronavirus \(COVID-19\)](#). A number of regulators announced their support for the CMA's approach and issued similar guidance (eg see FCA/PSR (2020), [FCA and PSR respond to the CMA's guidance on business cooperation under competition law](#)).

¹⁹⁴ Price gouging can be considered the expression of temporary and localised market power, which would therefore potentially infringe the Chapter II prohibition. For further discussion of this, and the CMA's work in this area, see Havell.R, Jenkins.C, Rutt.J. Scanlon.E, Tregear.P, and Walker.M (2020), [Recent Developments at the CMA: 2019–2020, Review of Industrial Organisation](#).

¹⁹⁵ All four cases were subsequently closed following further evidence that prices were unlikely to infringe competition law. See CMA (2020), [Hand sanitiser products: suspected excessive and unfair pricing](#).

- (a) The CAA consulted on its response to Heathrow Airport Limited's request for the CAA to change its approach to the calculation of HAL's regulatory asset base to take account of the impact of the pandemic and plans to publish a decision shortly.¹⁹⁶ The CAA also set out proposals in March 2021 on traffic risk sharing arrangements for NERL, in response to the significant reduction in air traffic, and expects to make licence modifications in late 2021. In relation to refunds, the CAA reviewed airline refund policies, publishing findings in July 2020,¹⁹⁷ and in March 2021, the CAA published guidance for airlines on the application of Regulation EC 261/2004 to cancelled flights, confirming that when cancelling a flight, airlines must offer passengers the choice of a refund, re-routing at the earliest opportunity or re-routing at a later date (subject to availability). The CAA continues to monitor airline refund processing. In January 2021 around 95% of refunds had been processed.¹⁹⁸
- (b) The FCA rapidly increased the data it collected on firms to monitor the effects of the economic downturn on firms' solvency. By getting early visibility of potential financial distress, it aimed to ensure that firms fail in an orderly way and to minimise harm to consumers and disruption to markets where possible. The FCA used its retail banking dataset to identify areas of consumer harm and to conduct exploratory work on business models and outcomes for consumers and SMEs to assess the impact of the pandemic and related government lending schemes. It provided guidance on payment deferrals and the provision of tailored support for mortgage and consumer credit borrowers, and set up a dedicated unit to coordinate the FCA's response to financial issues that affected SMEs (including the government insured COVID-19 Loan Schemes). The FCA monitored any potential weakening of competition arising from take-up of COVID-19 support loans, and issued a letter to CEOs on lending to small businesses. It also issues a number of other letters to CEOs, including on the fair treatment of customers preparing to raise equity finance. The FCA also sought to ensure that firms took a consistent approach to moving traders out of offices to ensure a level playing field;
- (c) The PSR and the FCA worked closely together to address the significant impact for some consumers of lost access to essential banking services due to the pandemic.¹⁹⁹ The FCA and PSR held weekly meetings with senior

¹⁹⁶ CAA (2021), [CAP2098: Economic regulation of Heathrow Airport Limited: response to its request for a covid-19 related RAB adjustment](#)

¹⁹⁷ CAA (2021), [CAA review into airline refund practices during the Covid-19 pandemic, CAP 1947](#)

¹⁹⁸ CAA (2021), [Economic regulation of NATS \(En Route\) plc: Update on approach to the next price control review](#)

¹⁹⁹ FCA (2020), [Banks, building societies and credit unions – branch access for essential services update](#)

industry leaders to share intelligence on emerging access problems and to ensure access was returned as quickly as possible. They also regularly engaged with consumer organisations to understand the differing needs and impact on different groups, such as the vulnerable and elderly. The FCA and PSR monitored the impact the pandemic specifically on access to cash by developing a national map of cash access identifying, at a local level, areas that lost access to cash due to temporary closures of bank branches and ATMs.²⁰⁰

- (d) The NIAUR engaged with market participants to understand the impact of the pandemic and ensure business continuity, and in particular set up enhanced transparency of the financial impact. It reviewed arrangements for dealing with supplier debt to assist suppliers in financial difficulty. It made allowances for the impact of the pandemic when setting tariffs for water, gas and electricity. The NIAUR also convened a forum to allow for crisis management discussions among suppliers and put in place key market and consumer metrics to monitor the impact of the pandemic on suppliers and consumers.
- (e) Ofgem worked to support financially vulnerable consumers. It set up a network charge deferral scheme and gave companies breathing space on some of their regulatory commitments to ensure they could focus on protecting consumers and keeping them on supply.
- (f) Ofwat worked closely with MOSL,²⁰¹ the Consumer Council for Water²⁰² and industry to take action to protect the interests of business customers. Including from the risk of systemic retailer failure. This included temporarily changing various regulatory requirements to allow for: COVID-19 repayment plans; wholesale charge payment deferrals; and the suspension of performance standards charges (among other things).

205. As noted in the CMA's state of competition report, the full impact of the pandemic may not become apparent for some time. In particular, if we do see a recession post-pandemic, we might expect an increase in concentration (something normally observed following economic contractions). The CMA and regulators will continue to ensure that they take the necessary action to protect the state of competition of the UK economy as and when issues become clear.

²⁰⁰ FCA (2020), [The FCA's and PSR's joint approach to Access to Cash](#)

²⁰¹ Market Operator Services LTD, the market operator for the water retail market in England.

²⁰² The statutory consumer body for the water industry in England and Wales. See [CCW | The voice for water consumers, here to help you.](#)