Office for the Internal Market

Transparency and disclosure:

Draft Statement of the OIM's policy and approach

OIMCon7

Office for the Internal Market

Part of the Competition and Markets Authority

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1. Introduction

1.1 This Office for the Internal Market ('OIM') statement ('Statement') sets out the OIM's policy and approach to transparency and information disclosure.

1.2 Part 4 of the United Kingdom Internal Market Act 2020 ('the Act') provides the Competition and Markets Authority ('CMA')[1] with independent reporting, advisory and monitoring functions to support the effective operation of the UK internal market. These functions are undertaken by the OIM, which sits within the CMA. For the remainder of this document, we use the term OIM when referring to the CMA discharging its internal market functions.

1.3 The OIM's aim is to assist national authorities across the UK, through non-binding technical and economic advice, to manage the potential evolution of different regulatory approaches that they introduce in a way which protects the effective operation of the internal market. In performing its functions, the OIM will ensure that it demonstrates transparency, independence, analytical rigour and even-handedness. For details on the scope of the OIM's work, see the Guidance on the operation of the CMA's UK Internal Market functions.

1.4 This Statement sets out the OIM's policy and approach to transparency and disclosure at a high level. In brief, this Statement provides an overview of:

- the role of transparency in the OIM and its connection with accountability and the publication of information;
- the OIM's approach to transparency in relation to its independent advice, reports and reviews that it is empowered to produce under the Act;
- the OIM's approach to information from and disclosing information to the requesting relevant national authority[2] (or authorities), and stakeholders;[3] and
- the OIM's approach when considering whether to disclose information to other UK public authorities.

It also notes the OIM's obligations regarding the protection and disclosure of information under the Enterprise Act 2002 ('EA02'), Freedom of Information

[1] The Enterprise and Regulatory Reform Act 2013 ('ERRA13') established the CMA as the UK's competition authority responsible for ensuring that competition and markets work well for consumers. The CMA is an independent non-ministerial department. Its work is overseen by a Board and led by the Chief Executive and senior team.

[2] See paragraphs 1.7 to 1.9 for definitions relating to national authority that are used in this document.

[3] See paragraph 1.6 for the meaning of stakeholders in this document.

Act 2000 ('FOIA'), the UK General Data Protection Regulation ('UK GDPR') and the Data Protection Act 2018 ('DPA18').

1.5 This Statement applies to the OIM's reporting, monitoring and advisory functions under Part 4 of the Act.

1.6 The term 'stakeholders' is used in this document to refer to businesses, customers, professional and trade associations, business and consumer organisations, government bodies, regulators and/or other interested and informed third parties.

1.7 The term 'relevant national authority' ('RNA') refers to the Secretary of State; the Scottish Ministers; the Welsh Ministers; and a Northern Ireland department, as the case may be (section 45(6) of the Act).

1.8 The term 'requesting RNA' is used in this document to refer to an RNA that makes a request for a report or advice under sections 34-36 of the Act.

1.9 The term 'non-requesting RNA' is used in this document to refer to other relevant national authorities that are not making the request under sections 34-36 and have a direct interest in a matter before the OIM.

1.10 This Statement does not replace the CMA's guidance, Transparency and disclosure: Statement of the CMA's policy and approach ('CMA6'), which sets out the approach in relation to the CMA's other functions.

1.11 Given that the internal market functions conferred on the OIM are new, the OIM expects to update this Guidance in due course to reflect emerging experience as well as any changes in best practice and the law.

1.12 Although it covers most of the points likely to be of immediate concern to requesting RNAs, non-requesting RNAs, stakeholders and their advisers, this Statement is not comprehensive. It cannot be seen as a substitute for the law itself, nor can it be cited as a definitive interpretation of the law. Anyone in any doubt about whether they may be affected by the points covered here should consider seeking legal advice.

1.13 The OIM will apply this Statement flexibly. This means that the OIM will have regard to the Statement when dealing with transparency and disclosure but that, when the facts of an individual matter reasonably justify it, the OIM may adopt a different approach. Accordingly, the points below are a general guide. It may be the case that the particular complexities of the issue the OIM is dealing with mean that it departs from its standard practice.

2. Transparency, accountability and the role of publications

Overview

2.1 The OIM aims to be open and transparent about the work it does and how it engages with those directly involved in or affected by its work, while seeking to maintain (as appropriate) the confidentiality of information it obtains in the exercise of its functions. It also aims to be reasonable when requesting and handling information, and to protect confidential information appropriately. Furthermore, the OIM aims to carry out its functions with appropriate efficiency and timeliness, including by having due regard to published timetables and statutory deadlines, where applicable.

2.2 The OIM aims to take a broadly consistent approach when providing an advice or report under the statutory functions of the OIM. However, the procedures and approach the OIM takes in an individual matter are influenced or determined by the requirements under the Act. Similarly, the circumstances of a request, report or review may determine the OIM's approach in particular instances.[4]

Transparency

2.3 Transparency is important for a number of reasons. In the context of the OIM, transparency is a means of ensuring that national authorities are treated even-handedly[5] and fairly. It also enables interested third parties (including customers, trade associations, business and consumer organisations, government bodies and regulators) to engage effectively with the OIM and to contribute to its work. Ensuring fairness and impartiality with those directly involved in the OIM's projects and effectively engaging with:

- requesting RNAs;
- non-requesting RNAs; and
- stakeholders (eg regulators, competitors, suppliers and customers) who might be affected by the internal market issue/s under consideration

in turn improves the effectiveness and efficiency of the OIM's work, and the quality and robustness of its reports, reviews and advice.

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[4] In particular, the OIM acknowledges that in dealing with requests relating to contemplated policy changes, the public interest may weigh in favour of maintaining confidentiality of information rather than disclosure.
[5] For details on the OIM principle of even-handedness, see paragraphs 4.9 and 4.10 of Guidance on the operation of the CMA's UK Internal Market functions.

2.4 Providing clear information about its work also enhances the visibility of the OIM, thereby increasing its impact and accountability.

2.5 The OIM aims to achieve transparency in its work by:

- engaging at an early stage with the requesting RNAs for sections 34-36 reports (or section 34(1) advice) or for those proposing a review under section 33(1) of the Act. The precise details are set out in the remainder of this Statement
- ensuring that the RNA(s) and stakeholders, referred to above, are informed of the OIM's formal commencement of a project, where appropriate;[6] this includes providing indicative timetables, and identifying OIM staff contacts and relevant Task Group members[7]
- usually placing announcements on the OIM's website when a section 33(1) review has been launched or a request for a report under sections 34-36 has been accepted[8]
- ensuring that the requesting RNA(s) of sections 34 to 36 reports or advice (as applicable) are appropriately informed of the OIM's progress during the course of a project
- ensuring that, at appropriate stages, the following RNAs and stakeholders have an opportunity to provide their views regarding a particular project, eg:
  - — the non-requesting RNA(s), in relation to a report under sections 34-36, if appropriate
  - — affected stakeholders in relation to certain reports,[9] if appropriate

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[6] See paragraph 3.12 for details.
[7] Schedule 3 of the Act establishes an OIM panel, consisting of a panel chair (who sits on the CMA Board) and a number of panel members. The OIM's panel chair may, as necessary, set up OIM task groups to undertake the OIM's work in line with any authorisation from the CMA Board. Each OIM task group must consist of at least three members of the OIM panel. The OIM task groups must act independently of the CMA Board.
[8] This would not apply to a request for advice under section 34 of the Act. The Act places a statutory obligation on the OIM to publish section 34 reports only (see section 34(10)). But there is no obligation, under the Act, to publish section 34 advice. It follows that, as well as not usually publishing section 34 advice, the OIM will not usually publish the fact that it has received a request for such advice.
[9] For example, for some requests, the OIM might liaise with stakeholders (eg selected competitors, suppliers and customers) who might be affected by the internal market issue/s under consideration.[10] See section 34(7) of the Act.

- publishing on its website the reasons for declining a request for a section 34-36 report from the requesting RNA(s)[10]
- publishing its reports[11]

Accountability

2.6 Transparency plays a central role in allowing the public, Parliament and the devolved administrations to hold the OIM to account. The OIM is accountable to the public through Parliamentary scrutiny in Westminster and the devolved administrations, for example through inquiries by select committees.

2.7 A member of the public may complain to the Parliamentary and Health Service Ombudsman (Ombudsman)[12] via a Member of Parliament about the OIM's administrative actions, after seeking to resolve the complaint with the OIM. The OIM will have regard to the Ombudsman's Principles of Good Administration, which are:

- getting it right
- being customer-focused
- being open and accountable
- acting fairly and proportionately
- putting things right, and
- seeking continuous improvement.

Publications

2.8 To support its aims with respect to transparency, and by extension ensure it can be held accountable, the OIM will make an information available by way of a range of publications. Some publications will be made in response to specific pieces of work, these include the publications listed at paragraph 2.5.

[10] See section 34(7) of the Act.
[11] Reports here refers to all of the reports that the OIM may provide under the Act, that is: sections 34 to 36 reports, section 33(1) reports and the OIM's mandatory annual and five yearly reports (see sections 33(5) and (6) of the Act).
[12] Further information available on the Ombudsman's website at http://www.ombudsman.org.uk/.

2.9 The OIM will also publish information in regular reports put out either by the OIM itself or by the CMA. The OIM must, by 31 March 2023, and following that at least once every year, prepare an annual report on:

- the operation of the internal market in the UK, and
- developments as to the effectiveness of the operation of that market.[13]

2.10 In addition, the OIM must, by 31 March 2023, and following that at least once in every five years, prepare a report on:

- the effectiveness of the operation of provisions of Parts 1 to 3 of the Act;
- the impact of the operation of Parts 1 to 3 of the Act on the operation and development of the internal market in the UK;
- any interaction between the operation of Parts 1 to 3 of the Act and common framework agreements; and
- the impact of common framework agreements on the operation and development of the internal market in the UK.[14]

2.11 Both the annual and five-yearly reports must be laid before the legislatures in each of the UK nations.[15] It should be noted that these reports will not review the impact of the Northern Ireland Protocol (or legislation necessary to implement it) on the operation of the UK internal market.

2.12 In addition to the OIM annual reporting described above, for each financial year, the CMA will produce an Annual Plan, setting out its objectives for the year, including specific objectives relating to the OIM function, which is laid before each House of Parliament, the Scottish Parliament, Senedd Cymru and Northern Ireland Assembly. The CMA is accountable to each House of Parliament, the Scottish Parliament, Senedd Cymru and Northern Ireland Assembly for the delivery of these objectives via the presentation of its Performance Report. The Performance Report will only include the information bulleted in the paragraph below if it is in the public domain.

[13] See section 33(5) of the Act.
[14] Section 33(6) of the Act.
[15] Section 33(7) of the Act.

2.13 The CMA will aim to provide consistent information in its Performance Report[16] for all of its functions, including the OIM. In relation to the OIM's work, this information will include:

- the date the project was opened
- a summary of the advice and/or recommendations, and
- the date the project was closed, and the time taken to complete it.

2.14 The CMA will also provide information in its Performance Report on its ongoing OIM work that is in the public domain.

2.15 See paragraphs 3.31 to 3.35 below for further details on the publication of OIM reports.

[16] The CMA is required, under paragraph 14 of Schedule 4 of the ERRA13, to provide certain information in an annual performance report.

3. Transparency during the course of a project

3.1 Chapter 3 sets out guidance on how the OIM approaches transparency in relation to its statutory work under Part 4 of the Act. It covers guidance in relation to:

- sections 34 to 36 reports (see paragraphs 3.2 to 3.13);
- section 34 advice (see paragraphs 3.14 to 3.15)
- section 33 mandatory reporting (see paragraphs 3.16 to 3.18);
- section 33 discretionary reporting (see paragraphs 3.19 to 3.27); and
- all of the above categories of OIM's statutory work; (see paragraphs 3.28 to 3.35)

Preparatory work in relation to sections 34 to 36 reports

3.2 Before formally deciding to accept a request from a requesting RNA(s) under sections 34 to 36 of the Act, the OIM will typically carry out some preparatory work. This may include pre-submission discussions with the requesting RNA(s) to facilitate the process following the receipt of a request. The OIM may engage with the requesting RNA(s) on specific information that is needed in the request including, for example, information that will contribute to an informed decision on whether the OIM will accept a request.

Immediately following receipt of a request for a report under sections 34 to 36

3.3 Following receipt of a request for a report under sections 34 to 36 of the Act, the OIM will send an acknowledgement of receipt to the requesting RNA(s). This will start the indicative timescales set out at paragraphs 5.8 to 5.11 of the Guidance on the operation of the CMA's UK Internal Market functions.

3.4 The OIM will usually publish on its website a factual notice that it has received a request for a report. This is likely to include (i) a statement that a request for a report has been received, (ii) the identity of the requesting RNA(s), (iii) the provision of the Act engaged by the request, (iv) an indicative timetable as to when the OIM will decide whether to accept or reject the request, and (v) the nature of the regulation or proposed regulatory provision under consideration, taking into account the information which is already in the public domain.

3.5 Prior to publication, the OIM will send an embargoed version of the notice to the requesting RNA(s). In some circumstances, the OIM may consider sending an embargoed version of the notice to non-requesting RNA(s), prior

to publication.[17] Before doing so, the OIM will liaise with the requesting RNA(s).

Prior to the OIM accepting or declining a request for a report under sections 34 to 36

3.6 In order to inform its decision to accept or decline a request, the OIM may seek further information / clarification from the requesting RNA(s). The OIM may also request information from non-requesting RNAs, or stakeholders affected by the request, as necessary.[18]

Accepting or declining a request for a report under sections 34 to 36

3.7 The OIM will aim to inform the requesting RNA(s) as to whether it has accepted or declined the request for a report within a maximum of 20 working days from receipt of the request.[19]

3.8 If a request for a report is accepted, the OIM will:

- inform the requesting RNA(s) of the decision; and
- usually announce publicly the fact that it has accepted a request for a report by updating the information on its website (alongside the notice of receipt of the request).

3.9 The published information on the OIM's website will reflect the particular circumstances of the matter and may include (i) an announcement that the OIM has accepted the request for a report, (ii) an indicative timetable setting out key dates up to the issuance of the report and (iii) information on governance, including the identity of members of the Task Group, if a Task Group is appointed.

3.10 If a request for a report is declined, the OIM will issue a notice to the requesting RNA(s) containing reasons for declining the request and inform the requesting RNA(s) of the expected timing and nature of any publicity for this decision, which in most cases will be limited to the notice being published on the OIM's website.

3.11 It is anticipated that, in most cases, the public announcements to accept or decline a request will be limited to the update on the OIM website described at

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[17] This is most likely to arise in the context of section 36 requests.

[18] For example in the context of section 36 requests, information may be sought from the authority that made or passed the regulatory provision.

[19] See paragraph 5.8 of the Guidance on the operation of the CMA's UK Internal Market functions.

paragraphs 3.10 and 3.11 above. However, the need for an additional statement (such as a press notice) will be determined on a case-by-case basis.[20]

3.12 Prior to making public announcements relating to accepting or declining a request, the OIM will usually send an embargoed version of the proposed announcement(s) to the requesting RNA(s).

3.13 The OIM will bring public announcements to the attention of non-requesting RNAs. In some circumstances, the OIM may consider sending an embargoed version of an announcement to non-requesting RNAs, prior to publication. If this is considered appropriate, before doing so, the OIM will liaise with the requesting RNA(s).

Request for advice under section 34 of the Act

3.14 As indicated in Chapter 2,[21] the OIM's approach to transparency for requests for advice under section 34 is different to the OIM's approach to transparency for requests for reports under sections 34, 35[22] or 36[23] of the Act. [24]

3.15 In practical terms, this means:

- In contrast to sections 34 to 36 reports, the OIM will not usually publish advice given under section 34 of the Act;[25]

[20] For example, further publicity may be appropriate in circumstances where the matter has already come into the public domain or become the subject of public speculation or concern, or where the OIM considers that it would be appropriate to enable the OIM's work to be progressed more effectively.
[21] See footnote 9 above.
[22] Under section 35(1) of the Act, the OIM may, at the request of an RNA (or two or more acting jointly), provide a report to the requesting RNA(s) on the impact on the effective operation of the internal market in the UK of a regulatory provision which:
(a) is passed or made after the day on which section 35 comes into force; (b) falls within the scope of Part 4 of the Act; and (c) applies to the relevant part of the UK, (for example, if the request is made by a Scottish Minister, the regulatory provision applies to Scotland); and (d)is within the requesting RNA(s)'s relevant competence.
[23] Under section 36 of the Act, the OIM may, at the request of an RNA (or two or more acting jointly), provide a report to the requesting RNA(s) on the economic impact of a regulatory provision which the requesting RNA(s) considers is, or may come to be, detrimental to the effective operation of the internal market in the UK. This provision applies only to regulatory provisions which have been passed or made after section 36 comes into force and where the regulatory provision falls within the scope of Part 4 of the Act.
[24] See sections 34(7) and (10) of the Act.
[25] There may however be exceptional circumstances where it is appropriate to do so, for example, where a third party has publicly disclosed, or elaborated on, the advice. If this is the case, the OIM will liaise with the requesting RNA(s) as is appropriate in the circumstances and, where relevant, non-requesting RNAs.

- It follows that the OIM will not usually publish the fact that it has received a request for advice nor will it usually publish the fact that it has accepted or declined a request to give such advice.

- Where the OIM considers it appropriate, it may provide information relating to the advice (including before its completion) to the non-requesting RNAs.[26] If this is considered appropriate, before doing so, the OIM will liaise with the requesting RNA(s).

Information gathering for mandatory reports under section 33

3.16 Mandatory annual[27] and 5-yearly[28] reports under section 33 follow different procedures to discretionary reviews under section 33: see paragraphs 3.19 to 3.27 for details on discretionary reviews.

3.17 Information-gathering will be a key part of this mandatory reporting: see paragraphs 4.1 to 4.12 for the OIM's approach to information-gathering.

3.18 For details on publication, see paragraph 3.34(b) below.

Overview of information gathering and public announcements for discretionary reviews under section 33

3.19 Discretionary reviews under section 33(1) of the Act (either on the OIM's own initiative or further to a proposal made or referred to it (under section 33(2)), follow different procedures to requests for reports and advice under sections 34 to 36.

3.20 Paragraphs 3.21 to 3.27 below describe issues and pre-launch procedures that the OIM will consider when deciding whether to launch (i) a self-initiated review under section 33(1) or (ii) where a proposal (under section 33(2)) has been made to the OIM for it to review a matter under section 33(1). For all section 33(1) discretionary reviews, the extent of pre-launch evidence-

[26] Note, however, after giving the advice to the requesting RNA(s), consistent with the timings provided for under section 34(9) of the Act, the OIM will provide a copy of the advice to the non-requesting RNAs.
[27] Under section 33(5) of the Act, the OIM must by 31 March 2023, and following that at least once every year, prepare an annual report on (i) the operation of the UK internal market; and (ii) developments that affect its operational effectiveness.
[28] Under section 33(6) of the Act, OIM must by 31 March 2023, and following that at least once every five years prepare a report on (i) the effectiveness of the operation of provisions of Parts 1 to 3 of the Act; (ii) the impact of the operation of those Parts on the operation and development of the internal market in the UK market; (iii) any interaction between the operation of those Parts and common framework agreements; and (iv) the impact of common framework agreements on the operation and development of the UK internal market.

gathering and stakeholder engagement will depend on the facts and circumstances of the matter.

Information-gathering and public announcement for a self-initiated review under section 33(1)

3.21 For the OIM's self-initiated reviews under section 33(1) of the Act,[29] in the initial phase prior to a decision to launch a review, the OIM may approach RNAs and relevant stakeholders to obtain or discuss certain information. It may issue informal or formal requests for further information as necessary.[30] The main focus of information-gathering is likely to facilitate a decision of whether to undertake a self-initiated review and this is likely to involve an initial economic analysis of the matter under review.

3.22 After any decision has been made to launch a self-initiated review, the OIM will normally notify all RNAs of this review before making a public announcement on www.gov.uk/cma. The announcement[31] will explain that the OIM is launching a review under section 31(1); and at the same time, it will publish an indicative timetable. A press notice may be published; and the OIM may also invite public comment.

Information-gathering and public announcement for a proposal made or referred to the OIM under section 33(2)

3.23 For a section 33(1) review, following a proposal under section 33(2) of the Act,[32] there is the potential for limited pre-submission engagement with the source, depending on the nature of the proposal. For those proposals that are relevant and sufficiently evidenced, the OIM may hold informal discussions with RNAs or stakeholders to obtain or highlight information. It may also issue informal or formal requests for further information to the extent necessary and proportionate.

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[29] Under section 33(1) of the Act, the OIM may from time to time undertake a review of any matter it considers relevant to assessing or promoting the effective operation of the internal market in the UK and/or provisions of Parts 1 to 3 of the Act. A review under section 33(1) may also be undertaken in response to a proposal by a third party, including the UK Government or any devolved administrations. [30] For details on when the OIM will use its information-gathering powers, see paragraphs 3.4 to 3.5 of the Statement of Policy on the Enforcement of the OIM's Information Gathering Powers.

[30] For details on when the OIM will use its information-gathering powers, see paragraphs 3.4 to 3.5 of the Statement of Policy on the Enforcement of the OIM's Information Gathering Powers.

[31] This announcement will usually follow a similar form that the OIM would use to publish an accept decision of a request under sections 34 to 36 (see paragraph 3.12).

[32] Section 33(2) provides that the OIM 'may receive and consider any proposals that may be made or referred to it for undertaking a review in exercise of its power under subsection (1)'.

3.24 Depending on the level of formality of the section 33(2) proposal and the nature of the proposal, the OIM will take a view on whether to make a public announcement at the point a proposal is received.[33]

3.25 After a decision has been taken on whether to launch a review, the OIM will notify the source of the proposal of the outcome, if appropriate.

3.26 The OIM may make a public announcement, on its website when launching a section 33(1) review, if appropriate; and at the same time, it will publish an indicative timetable setting out key dates up to the publication of the report. The OIM may publish a press notice and may also invite comments from the public.

3.27 RNAs will be kept informed of a decision to undertake a review as appropriate, with advance notice normally being given of the OIM's decision before it is made public.

Engagement with RNA and stakeholders over the course of a project

3.28 An important aspect of ensuring that the OIM is transparent in its work is the way it engages with RNAs and stakeholders over the course of the project. The timing and manner of engagement will vary depending on the type of work involved. When considering the manner and timing of engagement, the OIM will have regard to the need to ensure even-handedness in relation to the RNAs. The OIM will also have regard to the need to conduct its work effectively and efficiently, and to produce properly reasoned reports.

3.29 The OIM is not subject to a general obligation to disclose its thinking over the course of a project. However, the OIM will take a flexible approach to sharing its developing thinking and/or evidence with requesting RNA(s), having regard to the desirability of ensuring that such authorities are kept informed of key developments in the progress of their request. It may, for example, share its developing thinking or evidence when doing so would be helpful to the progression of the project at appropriate stages or to verify the information it has received. The OIM may also consider sharing its developing thinking more widely, for example with relevant stakeholders.

[33] For instance where the matter has already come into the public domain or become the subject of public speculation or concern, or where the OIM considers that it would be appropriate to enable the OIM's work to be progressed more effectively.

3.30 The OIM will seek to ensure that the requesting RNA(s) are aware of the procedures which apply to their request under sections 34 to 36 of the Act,[34] and the identity of the person or persons within the OIM who will be responsible for overseeing the work. Other affected stakeholders and interested individuals may also contact the OIM to share their views. The OIM may also itself contact other stakeholders and interested individuals, for example, to request information or to seek their views on the issue under review where doing so would assist the OIM in exercising its functions.

Publication of reports

3.31 As well as being necessary to meet specific obligations placed on it by the Act, publication of reports is a means of enhancing the visibility of the OIM's completed work, and of widening its impact, as well as enabling interested persons to hold the OIM to account.

3.32 On completing a piece of work which was announced at launch,[35] the OIM will publish the outcome on the OIM's website and usually issue a press notice with a link to the relevant pages on the OIM's website.

3.33 The level of detail published will reflect the OIM's statutory obligations, while also having regard to the OIM's transparency aims and the need to protect confidential information. For those matters announced at launch, if the OIM decides to close a project on the basis of prioritisation grounds, the OIM will explain why this is the case.

3.34 The following list indicates how publication of statutory reports will be handled:

(a) Mandatory annual and 5-yearly reports under section 33: Both will be published on the OIM's website. In addition, the OIM must arrange for a copy of these reports to be laid before (i) each House of Parliament; (ii) the Scottish Parliament; (iii) Senedd Cymru; and (iv) the Northern Ireland Assembly.

(b) Discretionary reviews under section 33: The OIM will usually publish a section 33 review on its website, along with accompanying documents (such as a report summary and a press notice). The OIM will usually share an embargoed copy of the final section 33(1) report with relevant

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[34] The OIM will review the information provided from time to time and consider whether it is appropriate to update the information provided to stakeholders directly involved or the published information. For example, it will consider the need to do so in the light of changes to the indicative timetable. [35] As described in paragraph 3.15, advice is generally not published.

[35] As described in paragraph 3.15, advice is generally not published.

RNAs prior to it being published and, where it is appropriate to do so, may share the accompanying documents.[36]

(c) Reports under section 34: The OIM must first provide a copy of its advice or report to the requesting RNA(s) before publication. The OIM must provide a copy of its report or advice to non-requesting RNA(s) within a further 15 days (beginning with the day after the report or advice was provided to the requesting RNA).[37] After this, reports will be published. The OIM anticipates that this will normally be done on the OIM's website.[38]

(d) Report under section 35: the report is provided to the RNA(s) who requested the report, and, after that, it will be published.[39]

(e) Report under section 36: the report must be shared simultaneously with all RNAs including those who did not make the request,[40] and the OIM must arrange for a copy of the report to be laid before all legislatures,[41] after the report has been laid before one or more legislatures, it will be published.[42]

Notice of announcements

3.35 Where it is appropriate to share embargoed copies of OIM announcements before publication, the OIM will generally give the RNAs such advance notice as it considers fair and sufficient before making such public announcements, either during or at the end of a project. The OIM will aim to balance an open approach with the need to ensure the orderly announcement of full information.

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[36] See sections 33(3) and (4).
[37] See section 34(8) and (9).
[38] As explained at paragraph 3.15, the OIM will not usually publish advice given under section 34 of the Act.
[39] See section 35(6).
[40] See section 36(7).
[41] The report is arranged to be laid before all legislatures (i.e. each House of Parliament, the Scottish Parliament, Senedd Cymru and the Northern Ireland Assembly as soon as reasonably practicable after each RNA has notified the OIM that it does not require any further time for private consideration and no later than six months from when provided to RNAs.
[42] See sections 36(8) to 36(10).

4. Obtaining and using information

Requests for information

4.1 The OIM's reports and advice must be evidence based. The receipt of relevant information is therefore important to the quality and effectiveness of the OIM's work. For example, depending on the nature of the report and advice, information may be required from suppliers whose businesses are likely to be affected by the regulation. Other sources may include customers, trade associations, business and consumer organisations, government bodies, regulators, and other affected stakeholders

4.2 The OIM may request information informally or formally, depending on the circumstances. The OIM often relies upon the co-operation of businesses and individuals and requests information on an informal, voluntary basis. This informal approach may be sufficient in many cases. The OIM will aim to be reasonable in formulating written information requests, determining to whom to address information requests, and determining the date by which the information should be provided. In particular, it will be receptive to stakeholders' concerns about the burdens placed on them by the OIM's requests while seeking to balance those concerns with the efficient and effective operation of the OIM.

4.3 Under section 41 of the Act, the OIM has the power to send a written notice (hereafter referred to as a 'section 41 notice') requiring a person to provide information or documents, to assist it to carry out its functions of reporting, monitoring and advising under Part 4 of the Act, or to use section 5 of the EA02 for these purposes. The details of the OIM's information gathering powers are set out in the Statement of Policy on the Enforcement of the OIM's Information Gathering Powers.

4.4 The OIM will use its formal information-gathering powers, with the possibility of enforcement, where necessary, to obtain information from businesses, public authorities, and, as necessary, individuals. Section 41 notices are most likely to be used where the OIM considers it necessary to obtain information that is essential for its advice and/or technical reports and that could not be obtained in a timely manner through other means. For example, the OIM may seek evidence from specific businesses to analyse the likely or actual market impact of regulatory divergence where this information is not readily available from elsewhere.[43]

[43] Paragraph 3.5 of Statement of Policy on the Enforcement of the OIM's Information Gathering Powers.

4.5 At the same time, the OIM recognises that information requests may impose a burden on recipients, whether they are businesses, consumers or organisations. The OIM will therefore aim to be fair and reasonable in formulating its requests for information. It will adopt a flexible and proportionate approach; the form of its engagement with respondents may differ depending on individual circumstances while supporting the overriding need for the OIM to operate efficiently and on the basis of accurate and complete information.

4.6 The OIM seeks to address these aims by:

- considering the information that is required for the OIM's purposes
- preparing clear and focused information requests
- addressing requests to those best placed to provide the information
- discussing, where practicable and appropriate, the request with the intended recipient prior to sending a request, including discussion of the information held by the recipient and the form in which it is held
- considering the likely timescale in which the intended recipient will be able to provide the information, and
- considering when the OIM requires the information, having regard to the relevant administrative or statutory timetable of the project and the impact a delay in receiving the information may have on the quality and timeliness of the OIM's work.

4.7 These factors may be relevant to many of the OIM's information requests, whether before a project is launched or while the work is ongoing. The extent of engagement prior to making an information request may vary. For example, following receipt of a section 34-36 request the OIM will generally discuss with the requesting RNA(s) the information they hold and the form in which they hold it. This will help to influence the decision on whether to use certain information-making tools, such as information questionnaires or surveys, depending on the complexity of the matter.

4.8 Where it is practicable and appropriate, the OIM will also discuss a draft of its information requests with the intended recipients or a sample of the intended recipients so as to enable requests to be prepared that reduce burdens on the recipients (for example, having regard to how information is held by the relevant business, public authority or individual). The OIM will consider representations about the scope of any information request and deadline for compliance.

4.9 The OIM will seek to set a reasonable deadline for all information requests and where draft formal requests have been issued the final request will have considered any representations on the proposed deadline.

4.10 It is likely that during the course of a project the OIM will seek additional information. When doing so, the same factors identified in paragraphs 4.5 to 4.7 are again likely to be relevant.

4.11 Recipients of information requests should make known any difficulties and discuss any queries raised by any information request. For example, they should make known any difficulties in responding within the timeframe set out in a request by contacting the OIM staff team as soon as possible after receiving a request, or as soon as they become aware that they may not meet the stipulated deadline.

4.12 The OIM may impose financial penalties for non-compliance with the OIM's formal information-gathering powers.[44] Detailed guidance on the OIM's approach to penalties can be found in Statement of Policy on the Enforcement of the OIM's Information Gathering Powers.

Identifying confidential information

4.13 The OIM recognises that the confidentiality of businesses' information is an important consideration for RNAs (or stakeholders) who participate in the OIM's work.

4.14 The OIM may therefore require that, in respect of all information supplied, businesses should make known to the OIM staff team which information they consider to be confidential, and provide sufficient explanations for their claim, for example, the nature of the information, the harm that could be caused by disclosure, the likelihood of harm and the magnitude of that harm. The explanations provided will be taken into account when considering whether to disclose any of the information provided. The OIM's commitment to transparency means that confidentiality claims will be rigorously assessed. Such claims should be kept to the minimum extent necessary to protect confidentiality, and the OIM will not accept blanket or unsubstantiated claims for confidentiality. Having taken into account confidentiality representations,

[44] See Sections 42(1) and (2) of the Act, which empower the OIM to impose a penalty in accordance with section 43 where it considers that: a person has, without reasonable excuse, failed to comply with any requirement of a section 41 notice; or intentionally obstructed or delayed any person in the exercise of the power (under section 41(7)) to copy any document that is produced in accordance with a section 41 notice.

the OIM will ultimately decide whether it is appropriate to disclose the information and, if so, the manner in which that disclosure should occur.

4.15 Information may be viewed as confidential information if it is:

- information whose disclosure the OIM thinks is contrary to the public interest
- commercial information whose disclosure the OIM thinks might significantly harm the legitimate business interests of the undertaking to which it relates, or
- information relating to the private affairs of an individual whose disclosure the OIM thinks might significantly harm the individual's interests.

4.16 Whether in fact the OIM accepts that information is confidential will depend on the relevant circumstances and will therefore be assessed on a case-by-case basis. The following are examples of information that the OIM will usually consider unlikely to cause harm to the person or business to whom it relates:

- information that is already in the public domain or can readily be deduced from information in the public domain, and
- financial information or other data[45] relating to a business which is more than two years old.

4.17 The following information will normally be considered to be confidential so that if the OIM is considering whether disclosure is appropriate, it will need to consider the manner of disclosure:

- financial information or other data relating to a business which is less than two years old
- information which, if disclosed, would be contrary to the public interest, for example information which may adversely affect the competitive process in the market
- information relating to the strategy (past or future) of a business, and
- responses to surveys (in aggregate or individually) the disclosure of which could be harmful to a business or individual or where the identity of the person providing the information should be protected.

[45] This could include, for example, businesses' turnover, sales, market share data, etc.

4.18 See Chapter 5 for further details on how the OIM handles matters of disclosure, including paragraphs 5.13 and 5.14 on how the OIM handles confidentiality in relation to disclosure.

5. How the OIM handles disclosure of information

Introduction

5.1 The OIM is under certain statutory obligations to protect confidential information. These obligations apply to the confidentiality of information relating to the affairs of individuals or the business of undertakings that comes to the OIM in connection with the exercise of its statutory functions. Restrictions on the further disclosure of information apply to the OIM and to other persons to whom it makes disclosure.

Disclosure of information obtained by the OIM

5.2 As described at paragraph 1.2 above, the OIM sits within the CMA. As a general rule, information lawfully obtained by the CMA in the context of one of its statutory functions can be used within the CMA for the purposes of facilitating the exercise of any of its statutory functions. Accordingly, as a general rule information lawfully obtained by the OIM can be shared within the CMA for the purposes of facilitating the exercise of any of the CMA's statutory functions.

5.3 The OIM, as part of the CMA, is subject to strict rules governing the disclosure of information to external parties. Part 9 of the EA02 imposes a general restriction on the disclosure of information which the OIM obtains during the exercise of any of its functions (referred to as 'specified information') to other persons.[46] The restriction applies a) during the lifetime of the individual to whom the information relates or (b) while the undertaking to which the information relates continues in existence. Only disclosure falling within one of the 'information gateways' (see below) is permitted.

5.4 The OIM may disclose specified information if:

- the information has on an earlier occasion been lawfully disclosed to the public (section 237(3) of the EA02)
- the OIM has an information gateway which exists apart from Part 9 of the EA02 (section 237(6) of the EA02)
- the OIM obtains the required consents (section 239 of the EA02)

[46] See sections 237 and 238 of the EA02. As per section 238(1)(b) and Schedule 14, information is 'specified information' if it comes to the OIM under the Act.

- the disclosure is made for the purpose of facilitating the exercise by the OIM of any of its statutory functions (section 241(1) of the EA02)

- the information is disclosed to another public authority in the UK for the purpose of facilitating the exercise by that authority of its functions under the EA02 and/or the legislation set out in Schedule 15 of the EA02[47] (under section 241(3) of the EA02)

- the information is disclosed to any person (after the OIM satisfies itself that the disclosure is proportionate to what is sought to be achieved by it) (under section 242 of the EA02)

  — in connection with the investigation of any criminal offence in any part of the UK

  — for the purposes of any criminal proceedings there or

  — for the purpose of any decision whether to start or bring to an end such an investigation or proceedings,

- the disclosure is to facilitate the performance of an overseas public authority's functions (under section 243 of the EA02).

5.5 Where the OIM discloses information to a person there are restrictions on the further disclosure or use of the information by that person. These restrictions vary between the information gateways. It is a criminal offence to disclose information in circumstances where such disclosure is not permitted under Part 9 of the EA02, where a person contravenes a direction under section 243(4) of the EA02 not to do so, or where a person uses the information disclosed to him or her for a purpose not permitted under Part 9 of the EA02.[48]

5.6 Generally, if the OIM is considering making a disclosure to a person it will most commonly consider making the disclosure with the consent of the person to whom the information relates or via the information gateway under section 241(1) of the EA02.

5.7 If, however, an information gateway other than the consent gateway in section 239 of the EA02 applies, and the OIM considers, having taken the relevant statutory considerations into account, that it is appropriate to make the

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[47] See Chapter 6 for further detail on the application of Part 9 of the EA02 to disclosures to UK public authorities and disclosures to overseas public authorities.

[48] Section 245 of the EA02.

disclosure, the OIM is not obliged to obtain the consent of the person to whom the information relates, if the OIM decides that disclosure is necessary for the purpose for which the OIM is permitted to make the disclosure. However, the OIM will consider a person's representations regarding the confidential nature of any information they have provided.

Considerations before making a disclosure

5.8 Even when an information gateway applies, the OIM is required to have regard to certain considerations before making a disclosure. In particular, the OIM must have regard to the three considerations set out in section 244 of the EA02, namely:

- the need to exclude from disclosure (so far as it is practicable to do so) any information whose disclosure the OIM considers to be contrary to the public interest
- the need to exclude from disclosure (so far as practicable)
  - — commercial information the OIM considers might significantly harm the legitimate business interests of the relevant undertakings or
  - — information relating to the private affairs of a relevant individual which the authority thinks might significantly harm that individual's interests,
- the extent to which the disclosure of information relating to the private affairs of an individual or commercial information is necessary for the purpose for which the OIM is permitted to make the disclosure.

5.9 These three considerations are applied by the OIM on a case-by-case basis when the OIM is considering disclosure of specified information.

How the OIM approaches disclosure under the information gateways

5.10 The OIM's approach to disclosure under the information gateways follows the CMA's approach (given that it is part of the CMA). It will assess the function or purpose for which the information is required and the scope of the information requested. In this context, the OIM will require the person requesting the information to provide details of the function or purpose for which the information is required and/or, if it is an information request, to specify the scope of the information request. In cases where the OIM is considering whether to disclose information on its own initiative, it will form a preliminary view on whether there is a suitable statutory gateway, although it will normally liaise with the relevant public authority to clarify the point.

5.11 When considering whether to disclose information under the information gateways, the OIM will take into account the sensitivity of the information and any representations received from the person to whom the information relates. In some circumstances, the OIM may consider it appropriate to restrict the information disclosed for example through anonymisation, aggregation or provision of ranges.

5.12 The OIM will take into account the protection of the information afforded by any restrictions that apply on the use and further disclosure of the information. In the absence of information to the contrary, and provided Part 9 of the EA02 restrictions on use and further disclosure (or equivalent legislative provisions affording the same or greater protection) apply, the OIM will consider that a recipient person will be mindful of the need to protect any specified information passed on to it so that the risks of inappropriate use or disclosure are limited.[49]

5.13 Even when an information gateway is available, there may be circumstances when the OIM will decline to provide the information to a person. This might occur, for example, when overall it may be more efficient or speedier for the person to request the information. Another circumstance might be when the limitations on the use or further disclosure that will apply, were the OIM to make the disclosure, would not be suitable to the person's purpose for requesting the information.

OIM's handling of confidentiality prior to disclosure

5.14 The OIM aims to protect confidential information that has been provided to it and will consider confidentiality carefully when deciding whether to disclose it as part of a report. In circumstances, where the OIM intends to disclose confidential information it will generally seek to inform the person claiming confidentiality or the person to whom the information relates of its intention to make a disclosure. When giving such advance notice, the OIM will provide details of the information it proposes to disclose relevant to the person concerned, for example by way of a description, inventory or draft of the proposed disclosure. However, the OIM may choose not to do so, for example if it considers that the person has had sufficient opportunity to submit confidentiality claims, or if the OIM has sought to protect the information to be disclosed.

[49] In the case of a public authority making the request for specified information, the OIM will not regard the disclosure of specified information to another public authority to enable that authority to carry out its statutory functions as being contrary to the public interest.

5.15 When the OIM considers it appropriate to disclose information it will consider how best to protect confidential information. For example, the OIM may redact, anonymise or aggregate confidential information or otherwise protect the information, for example by providing ranges in relation to numerical data.

OIM's approach to giving notice

5.16 The OIM's approach to giving notice follows the CMA's approach (given that it is part of the CMA). Subject to the circumstances described in this and the following paragraphs, the OIM will usually give notice of its proposal to disclose specified information. However, in line with established case law,[50] it may decide that it is not appropriate to do so in some circumstances such as:

- where the giving of prior notice may hamper the OIM's exercise of its statutory functions
- where information is being passed on to another UK public authority, RNA, or investigating or prosecuting authority
- the information is required as a matter of urgency, in which case the OIM will consider whether it is appropriate to inform the owner after the disclosure is made, or
- advance notice would be impracticable due to the number of public authorities and RNAs to whom notice would otherwise need to be given in which case the OIM will consider whether it is appropriate to publish a notice on the OIM's website announcing that it intends to disclose a certain class or type of information to another authority and inviting representations from interested parties.

5.17 When giving advance notice, the OIM will provide details of the information it proposes to disclose relevant to the person concerned for example by way of a description or draft of the proposed disclosure.

OIM's approach to disclosure in connection to section 31(6) of the Act

5.18 Section 31(6) of the Act provides that the OIM may give information or advice to the Secretary of State on matters relating to any of its functions. The OIM may provide such information or advice, as appropriate, in relation to issues concerning the effectiveness or otherwise of the OIM's powers in discharging its internal market functions and meeting its internal market aims and objectives. When giving such information or advice, the OIM will have due

[50] *R Kent Pharmaceuticals Ltd v Serious Fraud Office,* [2004] EWCA Civ 1494, 11 November 2004

regard to the need to act even-handedly in respect of the RNAs and both the OIM's and the CMA's overarching transparency objectives.

OIM's approach to disclosure in connection to 'prescribed' information

5.19 The OIM may disclose (under section 241A of the EA02) specified information which has been ordered by the Secretary of State to be 'prescribed'[51] information to any person for the purposes of:

- actual or prospective prescribed civil proceedings in the UK or elsewhere
- obtaining legal advice in relation to such proceedings, or
- establishing, enforcing or defending legal rights that are or may be the subject of such proceedings.

Disclosure of specified information to overseas public authorities under section 243 of the EA02

5.20 The OIM (as part of the CMA) may also disclose specified information to overseas public authorities[52] in order to facilitate:

- the investigation and bringing of criminal proceedings,[53]
- the investigation and bringing of civil proceedings in connection with the enforcement of specified legislation,[54] or
- a decision as to whether to start or bring to an end such investigations or proceedings.[55]

5.21 Information disclosed to an overseas public authority may be disclosed subject to the condition that it must not be further disclosed without the agreement of the OIM.[56] The disclosed information may not be used by the

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[51] For these purposes 'prescribed' means prescribed by order of the Secretary of State. As at the date of publication of this Statement, the Secretary of State has issued one order prescribing certain information and proceedings for the purposes of this section (the Enterprise Act 2002 (Disclosure of Information in Civil Proceedings etc) Order 2007, SI 2007/2193).
[52] Meaning a person or body outside the UK which appears to the CMA to exercise functions of a public nature in the enforcement of consumer or competition legislation (sections 243(11) and (12) of the EA02).
[53] Section 243(2)(c) and (d) of the EA02.
[54] Sections 243(2)(a) and (b) and 243(12) of the EA02.
[55] Section 243(2)(e) of the EA02.
[56] Section 243(10)(a) of the EA02.

overseas public authority for any purpose other than that for which it was first disclosed.[57]

5.22 The Secretary of State has the power to prevent a disclosure to an overseas authority which the OIM would be permitted to make under Part 9 of the EA02 where he or she thinks it would be more appropriate for any investigation or proceedings to be carried out in the UK or another country.[58]

5.23 When the OIM intends to make a disclosure to an overseas authority, the OIM will take into account parties' representations regarding the confidential nature of any information they have provided. Also, if appropriate, the OIM will seek to protect the information to be disclosed (for example by anonymising or aggregating data or using ranges).

5.24 Although not required to do so, the OIM will generally seek to give notice of a possible disclosure. When giving such advance notice, the OIM will provide details of the information it proposes to disclose relevant to the person concerned for example by way of a description or draft of the proposed disclosure.[59]

Complaint handling

5.25 The OIM's procedures for dealing with complaints raised by stakeholders in connection with the handling of information are set out at paragraphs 51 and 52 of the OIM's Code of Conduct.

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[57] Section 243(10)(b) of the EA02.

[58] Section 243(4) of the EA02.

[59] However, in line with established case law, it may decide that it is not appropriate to give notice in some circumstances, such as: (i) where the giving of prior notice may hamper an investigation; (ii) where information is being passed on to another investigating or prosecuting authority; (iii) the information is required as a matter of urgency; (iv) it would be impracticable to do so (for example, because of the number of persons to whom notice would otherwise need to be given). See *R Kent Pharmaceuticals Ltd v Serious Fraud Office, [2004] EWCA Civ 1494, 11 November 2004.*

6. Freedom of information and data protection

FOIA

6.1 The FOIA was introduced to improve the transparency and accountability of public bodies and gives anyone a general right of access to information held by public authorities such as the CMA (which includes information held by the OIM).

6.2 It is important to note that the OIM is one of several CMA functions for the purposes of FOIA, which means that:

- any request to the CMA for recorded information would include information held for the purposes of the OIM's functions; and
- any request to the OIM for recorded information would include information held for the purposes of the CMA's other functions.

Given that FOIA obligations fall on the CMA as a whole rather than on the OIM specifically, the rest of this section will refer to the CMA.

6.3 When a person makes a request to the CMA for recorded information, the FOIA requires the CMA to (i) inform the requester whether or not it holds the requested information; and (ii) if it does, it must disclose the information to the requester unless there is an applicable exemption. A request for information will be dealt with within 20 working days.[60]

6.4 There are a number of exemptions from disclosure under the FOIA of particular relevance to a request for information held by the CMA, including where disclosure would be prohibited under any statutory enactment.[61] For example, the CMA is prohibited from disclosing any 'specified information' (as per Part 9 of the EA02) under the FOIA.

6.5 Requests for information under the FOIA should be submitted to the CMA's Information Access Team.[62] Any person not satisfied with the CMA's refusal to provide information in response to a FOIA request has the right to an internal review of the CMA's decision, and a further right to complain to the Information Commissioner's Office (ICO) if that person is not satisfied with the internal review decision.

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[60] This deadline may be extended if the CMA reasonably requests further information or is considering the public interest test (sections 10(2) and (3) of the FOIA).

[61] Section 44(1)(a) of the FOIA provides for an absolute exemption in this regard.

[62] Reference to the CMA in paragraphs 7.7 and 7.8 also include references to the OIM's functions.

6.6 The CMA is required to have a publication scheme, approved by the ICO, and to publish information covered by the scheme. More information about the FOIA generally is available on the ICO website.[63]

UK GDPR and DPA18

6.7 The UK GDPR and DPA18 set out the rules for processing personal data relating to living individuals including the core data protection principles.[64] 'Processing' refers to practically anything you can do with personal data including collecting, recording, using or disclosing it. The principles include the need for those who process personal data to do so lawfully, fairly and transparently; this includes the need to be open with individuals about how you process their personal data.

6.8 The OIM (like all of the other CMA functions) is bound by the provisions of the UK GDPR and DPA18 where it is processing personal data. Given that the UK GDPR and DPA18 obligations fall on the CMA as a whole (as 'controller') rather than on the OIM specifically, the rest of this section will refer to the CMA.

6.9 No personal data will be disclosed by the CMA unless that disclosure is compliant with the UK GDPR and DPA18.

6.10 Particular issues arise in respect of the handling and disclosure of underlying data from business surveys or other market research. Both the UK GDPR and DPA18, as mentioned, and the Code of Conduct of the Market Research Society apply to personal data, and the latter requires the anonymity of respondents to be preserved unless they have given informed consent. If the CMA considers it necessary to disclose any of the underlying data, it must ensure that the identities of the persons who participated in the survey are protected. The CMA will consider what protection may be necessary to ensure that the identity of survey respondents is not revealed.

6.11 Any person may ask the CMA whether it is processing any personal data about them and if so, to be provided with a copy of it (subject to any applicable exemptions). If not satisfied with the CMA's response, that person may complain to the ICO.

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[63] See the ICO's Guide to freedom of information at www.ico.org.uk/for-organisations/guide-to-freedom-of-information/.

[64] Article 5 of the UK GDPR. See also the ICO's Guide to the UK GDPR at www.ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/.

6.12 CMA guidance on how the CMA (including the OIM as part of the CMA) collects, uses and shares personal information (personal data) at the CMA can be found in the Personal information charter. That privacy notice is directly applicable to the OIM.

ANNEX A: Process Letter

Introduction

A. The OIM prepared a draft document that described the key steps the OIM will undertake when providing advice or reports under sections 33 to 36 of the Act (hereafter referred to as a 'Process Letter') ahead of the full transparency statement, so that it was available shortly after the OIM's launch. The OIM consulted with the RNAs on its contents earlier this year. The revised Process Letter (dated 2 March 2022) took into consideration the RNAs' comments submitted to the OIM, where appropriate.[65] The key points in the revised Process Letter have been combined with the draft Statement.

B. The Process Letter is now also appended to the Draft Statement as Annex A to form an integral part of the Statement. From time to time, it may be updated to reflect lessons learned in the course of the OIM exercising its new functions. Any revisions to the Process Letter will published on the OIM's website.

C. It is important to note that for the remainder of this Annex our use of the term 'stakeholders' refers businesses, customers, professional and trade associations, business and consumer organisations, government bodies, regulators and/or other interested and informed third parties.[66]

Key steps undertaken by the OIM when providing advice or reports under sections 33 and 34 to 36 of the UK Internal Market Act 2020
Revised draft – 2 March 2022

1. Following its launch on 21 September 2021, the Office for the Internal Market ('OIM') is ready to receive requests for reports and advice from requesting national authorities under sections 34, 35 and 36 of the UK Internal Market Act 2020 (the 'Act'). It is also ready to receive proposals to undertake a review on UK internal market matters under section 33(1) of the Act.

2. Following engagement with officials from the four UK nations' government representing the Relevant National Authorities (RNAs), the OIM sets out below a high-level summary of how it currently expects to engage with RNAs and other stakeholders when it undertakes the drafting of a report or advice under

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[65] Some of the contents of the Process Letter is partially duplicative of Part 3 of the Draft Statement. The rationale for preserving this partly duplicative content is that the Process Letter was initially developed to assist the RNAs when making a request to the OIM, in contrast to the Transparency Statement that is a high level document with a broader application for **all** interested individuals, including all stakeholders, as well as the RNAs.
[66] This is not intended to be a legal definition.

its discretionary functions set out in the Act.[67] In relation to these functions, it also covers how and when the OIM will publicise its work.

3. This letter should be read alongside the OIM's published guidance on the operation of the CMA's UK Internal Market Functions (OIM1) ('the Operational Guidance').[68] The OIM's approach to transparency and disclosure, as set out in this letter, is consistent with the principles set out in Transparency and Disclosure: Statement of the CMA's policy and approach (CMA6).[69]

4. As set out in the Operational Guidance, a specific OIM transparency statement will be prepared and published in due course. Accordingly, aspects of this letter may be subject to revision, in line with the outcome of consultation on that transparency statement.

5. Further, the OIM anticipates that the process for reviewing requests for reports and advice will evolve over time, taking into consideration our experience of operating in practice and the feedback received from stakeholders and from RNAs.

6. This letter contains four sections:

   (a) Section A sets out the key steps relevant to a request for a report under sections 34, 35, or 36 of the Act;

   (b) Section B covers any possible procedural differences relating to requests for advice and sets out from which point in the legislative making process an RNA may submit a request for report or advice under section 34 of the Act;

   (c) Section C sets out the OIM's approach to transparency and engaging with RNAs, when it undertakes reviews under section 33(1) of the Act, either on its own initiate or when a proposal is made for the OIM to undertake a review; and

   (d) Section D covers subsequent engagement on the contents of reports and advice.

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[67] Namely under its review function under section 33(1) and its advisory functions under sections 34 to 36.

[68] Guidance on the operation of the CMA's UK Internal Market functions - GOV.UK (www.gov.uk)

[69] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/270249/CMA6_Transparency_Statement.pdf

A. Requests for reports under sections 34, 35 or 36 of the Act

7. The schedule below summarizes the key steps that the OIM proposes to follow when receiving a request for a report under sections 34, 35 or 36 of the Act, with a focus on the OIM's proposed approach to transparency and disclosure.

Key steps	Section 34 (request for a report only) / 35 / 36
Pre-request phase – RNA may inform the OIM that it is considering / intends to send a request for a report under ss. 34 to 36	Short pre-submission engagement with the RNA (or authorities if the request is to be made jointly). Such discussions may facilitate the process following the receipt of the request, and we therefore encourage RNAs who are considering making a request to engage with the OIM in advance of doing so. This period of pre-submission may be used to discuss, for instance, the information that should be included in the request, or the timing for and/or the content of the OIM's announcement (see below).
Immediately following receipt of a request for a report **Acknowledgment of receipt and public announcement that a request has been received**	Following receipt of a request: 1. The OIM will send an acknowledgement of receipt to the requesting RNA(s). This will start the indicative timescales set out at paragraphs 5.8 to 5.11 of the Operational Guidance. 2. The OIM will usually publish on its website a factual notice that it has received a request for a report. The factual notice of receipt is likely to include (i) a statement that a request for a report has been received, (ii) the identity of the requesting authority (ies), (iii) the provision of the Act engaged by the request, (iv) an indicative timetable as to when the OIM will decide whether to accept or reject the request, and (v) the nature of the regulation or proposed regulatory provision under consideration (including the sector under consideration), taking into account the information which is already in the public domain. Prior to publication, the OIM will send an embargoed version of the notice to the requesting RNA(s). In some circumstances, the OIM may consider sending an embargoed version of the notice to non-requesting RNAs, prior to publication.[70] Before doing so, the OIM will liaise with the requesting RNA(s).
Prior to the OIM accepting or declining a request	In order to inform its decision to accept or decline a request,

[70] This is most likely to arise in the context of section 36 requests.

	1. The OIM may seek further information or clarification from the requesting RNA(s). 2. The OIM may also request information from non-requesting RNAs or stakeholders as necessary.[71] The information sought will vary on a case by case basis and could include, for example, clarifications of information already received or other information regarding market size, impact assessments or any other matters, which may be relevant to the OIM's decision to accept or decline a request.
Accepting or declining a request	The OIM will aim to inform the requesting RNA(s) as to whether it has accepted or declined the request within a maximum of 20 working days from receipt of the request.[72] 1. If a request for a report is accepted, the OIM will: • inform the requesting RNA(s); and • the OIM will usually publicly announce the fact that it has accepted a request for a report by updating the information on its website (alongside the notice of receipt of the request). The published information will reflect the particular circumstances of the matter and may include (i) an announcement that the OIM has accepted the request for a report, (ii) a new indicative timetable setting out key dates up to the issuance of the report and (iii) information on governance, including the identity of members of the Task Group, if a Task Group is appointed. 2. If a request for a report is declined, the OIM will give the requesting RNA(s) a notice containing reasons for declining the request and inform the requesting RNA(s) on timings and nature of any publicity, which in most cases will be limited to the notice being published on the OIM's website. It is anticipated that, in most cases, the public announcements to decline or accept a request (respectively) will be limited to the update on the OIM website in the way described at 1 and 2 above. However,

[71] For example in the context of section 36 requests, information may be sought from the authority that made or passed the regulatory provision.

[72] See paragraph 5.8 of the Operational Guidance.

	the need for an additional statement (such as a press notice) will be determined on a case-by-case basis.[73] Prior to making public announcements relating to accepting or declining a request, the OIM will send an embargoed version of the proposed announcement(s) to the requesting RNA(s). The OIM will bring the public announcements made to the attention of non-requesting RNAs. In some circumstances, the OIM may consider sending an embargoed version of an announcement to non-requesting RNAs, prior to publication. If this is considered appropriate, before doing so, the OIM will liaise with the requesting RNA(s).
Review phase following acceptance of the request	As set out in the Operational Guidance (paragraph 5.9), where the OIM agrees to provide a report, it will aim to complete its review within 26 weeks, or sooner depending on the complexity and urgency of the matter. However, in some circumstances, this timeframe might be longer. During this phase, the OIM will send information requests to RNAs and stakeholders. It may issue a public invitation to comment on the impact of the regulatory provision on the internal market. Throughout the process of producing reports, the OIM will engage appropriately with requesting RNA(s) and other RNAs, which includes sharing details regarding the overall timetable. Moreover, during this period, the OIM will likely ask RNAs and stakeholders to: (i) Provide confidentiality representations relating to the possible harm arising from the disclosure of all, or a subset of, the information they have provided to the OIM. The OIM will carefully consider such representations including those that claim that the disclosure of certain information (such as that relating to policy formation or development) is contrary to the public interest. (ii) Fact check extracts from the draft report, where appropriate.

[73] For example, further publicity may be appropriate in circumstances where the matter has already come into the public domain or become the subject of public speculation or concern, or where the OIM considers that it would be appropriate to enable the OIMs work to be progressed more effectively.

Issuing and publishing a report	Consistent with the Act, the issuance and publication requirements for OIM's reports will differ depending on the section of the Act under which the request for a report was made. Further detail is provided in Appendix 1. The OIM will publish the report with appropriate redactions, having taken into account confidentiality representations from relevant stakeholders.[74] The OIM anticipates that most reports will be published on the OIM's website along with any other documents relevant to the report such as a summary of the report or any additional statement such as a press notice. Usually for information purposes, the OIM will share an embargoed version of any additional documents with the requesting RNA(s) before publication and, where it is considered appropriate to do so, with the non-requesting RNAs before publication.

B. Request for advice or report under section 34 of the Act

1. Differences relating to requests for advice

8. The above table focuses on requests for reports under sections 34, 35 or 36 of the Act. In relation to requests for advice under section 34, the OIM will not distinguish substantially between the procedures for advice and reports, except where it is appropriate to do so in application of the relevant statutory requirements.[75]

9. In practical terms, this means:

- The OIM will not usually publish advice given under section 34 of the Act;[76]
- It follows that the OIM will not usually publish the fact that it has received a request for advice nor will it usually publish the fact that it has accepted or declined a request to give such advice.

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[74] Part 9 of the Enterprise Act 2002 imposes restrictions on the disclosure of information which the CMA obtains during the exercise of any of its functions to other persons. This includes the functions of the OIM under Part 4 of the Act.

[75] See paragraph 5.3 on the Operational Guidance.

[76] There may however be exceptional circumstances where it is appropriate to do so, for example, where a third party has publicly disclosed, or elaborated on, the advice. If this is the case, the OIM will liaise with the requesting RNA(s) as is appropriate in the circumstances and, where relevant, non-requesting RNAs.

- Where the OIM considers it appropriate, it may provide information relating to the advice (including before its completion) to the non-requesting RNAs. In particular, the OIM will usually aim to share the fact that it has received a request for advice with non-requesting RNAs as soon as possible (eg shortly following receipt of the request). However, the OIM would be open to discussing with the requesting RNA whether there are reasons for delaying this communication; for instance, until after a decision is made to accept or decline the request. In any event, before approaching non-requesting RNAs, the OIM will liaise with the requesting RNA(s) as appropriate.

- After giving the advice to the requesting RNA(s), consistent with the timings provided for under section 34(9) of the Act, the OIM will provide a copy of the advice to the non-requesting RNAs.

10. RNAs should take into account the above points when deciding whether to request advice or a report from the OIM under section 34(1) and in particular the fact that we anticipate that, while advice will have a similar form and scope as a report, the nature of the evidence base available to the OIM for advice may be more limited than that available to the OIM when providing a report. Although information gathering will need to be determined on a case-by-case basis, if the OIM has not publicised the fact that it is advising on the matter, this may have an impact on information that the OIM can easily gather, for example, from market participants.

11. It follows from the above that a request for advice might be particularly suitable in situations where an RNA is seeking OIM's input earlier in the process, in particular at a stage where the proposed regulation is not yet in the public domain.

2. From which point in the legislative process may an RNA submit a request for report or advice to the OIM under section 34 of the Act?

12. The Act sets out that the OIM may give advice, or provide a report, to an RNA (or RNAs jointly) with respect to a 'qualifying proposal' (section 34(1) of the Act). The definition of a 'qualifying proposal' includes the following a '*proposal … that a regulatory provision… should be passed or made'* (section 34(2) of the Act).

13. The OIM encourages RNAs to consider early on in the legislative process (and well before they consult on a proposed regulation), the best timing for

requesting an advice or report from the OIM under section 34(1) of the Act. The OIM would aim to engage with the RNA to consider how its advice or report would fit into their legislative process and assess whether the legislation is at a sufficiently advanced stage that it meets the legislative criteria of a 'qualifying proposal'.

C. OIM's approach to transparency and engaging with RNAs, when undertaking reviews under section 33(1) of the Act, either on its own initiative or following a proposal

1. Matters for review under section 33 (1) of the Act

14. Under section 33(1) of the Act, the OIM may from time to time undertake a review of any matter it considers relevant to assessing or promoting the effective operation of the internal market and/or the provisions of Parts 1 to 3 of the Act. A review under section 33(1) may also be undertaken in response to a proposal by a third party, including the UK Government or any devolved administrations.[77] Upon receipt of a proposal, the OIM may exercise its discretion to conduct a review under its section 33(1) powers if it considers it appropriate to do so.[78]

15. Matters for review under section 33(1) may include particular sets of regulations, trade association rules or sectors. When considering whether to exercise its discretion to undertake a review of a particular matter (or matters) under section 33(1), the OIM will have due regard to its objective to support the effective operation of the UK internal market with particular reference to the purposes of Parts 1 to 3 of the Act and to its published prioritisation principles.

16. As well as considering proposals for a review, the OIM will also rely on a number of intelligence sources to identify possible matters for review under section 33(1) including:

- submissions received via the OIM's online webform;
- undertaking a range of 'horizon scanning' activities of potential and actual regulatory divergence, policy initiatives and interventions affecting the UK internal market;
- information obtained from engagement with stakeholders; and

[77] Section 33(2) of the Act.

[78] It is also worth pointing out that in practice there may not be a 'bright line' between an own-initiative review and a review undertaken after receipt of a proposal from a third party or RNA. This reflects the fact that the OIM will be continually reviewing intelligence received, and prioritising work accordingly, against its published prioritisation criteria.

- intelligence received from other parts of the CMA.

17. Before reaching a decision of whether (or not) to undertake a review on a particular matter, the OIM anticipates that engagement with RNAs may, on occasion, be needed as they are likely to have expertise or hold relevant information on matters under consideration.

18. Under section 33(3) the OIM may prepare and publish a report on any matter it decides to review under section 33(1) of the Act.

2. Announcing a review under section 33(1)

19. The OIM will not normally publicise that it is considering whether to undertake and launch a review under s.33(1) of the Act.

20. The OIM is more likely to make a public announcement regarding a section 33(1) review after a decision has been made to launch a review. In other words, a public announcement on the OIM's review work under section 33(1) will usually be made after OIM resource has been allocated and committed to preparing a completed section 33(1) report on a specific matter or matters. Publicising the work will help the OIM gather the information it will need to make an assessment of the matter in question. However, in some limited circumstances, it might be appropriate to make a public announcement earlier than the point of launch. For instance, it might be appropriate to publicise the receipt of a proposal under section 33(2) prior to making a decision to undertake a review under section 33(1). Depending on the level of formality of the section 33(2) proposal and the nature of the proposal, the OIM will take a view on whether or not to make a public announcement at the point a proposal is *received*. For example:

- if the OIM receives a proposal that is very high level and obviously irrelevant, receipt of this proposal is unlikely to warrant a public announcement, unless the proposal has been publicised by its author;

- if the OIM receives a substantial and relevant proposal, the OIM may consider making a public statement about receipt of the proposal.[79]

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[79] For instance where the matter has already come into the public domain or become the subject of public speculation or concern, or where the OIM considers that it would be appropriate to enable the OIMs work to be progressed more effectively.

21. RNAs will be kept informed of a decision to undertake a s.33(1) review as appropriate, with advance notice normally being given of the OIM's decision before it is made public.

3. Preparation and publication of a s.33(1) report

22. While a section 33(1) report is being prepared, the OIM will liaise as necessary with appropriate RNAs on the progress of the report including providing an update on timing.

23. We consider that, if the OIM decides to prepare a section 33(1) report, it should also publish it, including to comply with the OIM's guiding principle to be open and transparent.

24. The OIM will usually publish a section 33(1) report on its website, along with accompanying documents (such as a report summary and a press notice). The OIM will usually share an embargoed copy of the final section 33(1) report with relevant RNAs prior to it being published and, where it is appropriate to do so, may share the accompanying documents. Taking into account the specific circumstances in each case, the OIM will give careful consideration to what it considers to be a reasonable notice period for this purpose.

D. Subsequent engagement on the contents of reports and advice

25. Following publication of a report, or the issue of an advice and the sharing of that advice with non-requesting RNAs, the OIM anticipates that it might be asked to explain or clarify its reports with RNAs. The level of engagement will vary depending on the nature and content of the report.

26. The OIM aims to be ready to explain and clarify the contents of its reports or advice with stakeholders at their request (including to Ministers, Committees). In doing so, we would welcome each RNA's support with any Ministerial meetings, Committee appearances or senior-level meetings we might be asked to attend, such as, for instance, providing the OIM with factual information on the composition and purpose of a committee, or providing background on any prior consideration of the issue.

27. We will welcome RNAs' comments on our published reports as well as updates on what impact they have had. However, more generally, we do not expect to engage in an iterative process with the RNAs on the appropriateness or robustness of the OIM's findings (in completed reports or advice). In addition, after completing an advice or report on a specific regulatory provision under sections 34 to 36 of the Act, we do not expect to follow up with further advice or

analysis on how any proposed amendments to the regulatory provision might affect the internal market. However it is still possible for an RNA to request a subsequent report or advice from the OIM in relation to a further regulatory provision (or proposed regulatory provision) which has been reformulated in light of an OIM report or advice.

Appendix 1 – publication of section 34 to 36 reports

- As indicated in the process letter, the issue and publication requirements for OIM's reports differ depending on the section of the Act under which the request for a report is made. For all reports produced, the OIM will provide its report to the requesting RNA(s).[80] In addition:

    - For reports provided under section 34 of the Act, after providing the report to the requesting RNA(s), the OIM will provide a copy of the report to the non-requesting RNAs as soon as reasonably practicable after the requesting RNA (or each of them) has informed the OIM that it may do so or, if sooner, by the end of the 15th (calendar) day from the day after the report was provided to the requesting RNA(s).[81] After this, the OIM will publish its report as soon as reasonably practicable.[82] Therefore, non-requesting RNAs will see a s.34 report before it is published. The OIM will notify all RNAs (in writing) of the intended date of publication of the report and ensure that the date accommodates the need for non-requesting RNAs to have advanced notice of the report, as the OIM considers reasonable before publication. [83]

    - For reports provided under section 35 of the Act, after providing the report to the requesting RNA(s), the OIM will publish its report as soon as it is reasonably practicable to do so.[84] In addition to the requirements set down in the Act, the OIM may also consider whether it is appropriate to provide an embargoed copy of the report to non-requesting RNAs before it is published. At this stage, sharing an embargoed copy of the section 35 report to non-requesting RNA will usually be for the purpose of ensuring that the RNA has sufficient advance notice of the content of the report before it is published. In such cases, the OIM will provide such advance notice as it considers reasonable before publishing the report.

    - For reports provided under section 36 of the Act, at the same time as providing the report to the requesting RNA(s), the OIM will

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[80] For joint requests, requesting RNAs will receive the report simultaneously.
[81] See section 34(9)
[82] See section 34(10)
[83] As the process letter indicates the OIM will not usually publish advice given under section 34 of the Act. However, consistent with the timings provided for under section 34(9) of the Act, the OIM will provide a copy of the advice to non-requesting RNAs.
[84] See section 35(6)

provide a copy of the report to each non-requesting RNAs. After each RNA has notified the OIM in writing that it does not require further time for private consideration of the report, but no later than 6 months after provision of the report,[85] the OIM will arrange for a copy of a report to be laid before each House of Parliament, the Scottish Parliament, Senedd Cymru and the Northern Ireland Assembly (collectively the 'legislatures') as soon as reasonably practicable.[86] Only after these arrangements have been made, and the report has been laid before one or more of the legislatures, will the OIM publish the report.[87]

[85]This 6 month period begins with the day on which the OIM has provided the report (or a copy of the report as applicable) to all RNAs (see section 36(8)).
[86] See section 36(8) and (9)
[87] See section 36(10)