

Memorandum of Understanding between the Bank of England and the Competition and Markets Authority

Introduction

1. This Memorandum of Understanding (“**MoU**”) establishes a framework of cooperation, information sharing and constructive communication between the Bank of England (the “**Bank**”) and the Competition and Markets Authority (the “**CMA**”), collectively referred to as the “**parties**” throughout this document.
2. The parties have entered into this MoU in light of there being a number of areas where the Bank and the CMA’s respective statutory functions interact and where issues of mutual interest may arise from time to time.

Purpose of this MoU

3. The parties are committed to fostering effective working relations, principally by promoting a culture of cooperation and collaboration between the two of them.
4. The shared aim of this MoU is to enable closer working between the parties, including the exchange of appropriate information, to assist them in discharging their statutory functions. It is also to convey the parties’ commitment to cooperating proactively in matters of common interest.
5. The parties recognise the benefit of setting out in this MoU a shared vision for this ongoing relationship.
6. Any cooperation and engagement between the parties will be subject to the priorities and available resources of each of the parties, and will be consistent with all applicable legal requirements, including in respect of the sharing of information.

Respective Roles

7. The parties have separate and independent mandates which are each set out in statute.
8. The parties mutually recognise their independence and the need to conduct matters in accordance with their respective statutory powers and responsibilities.

Role and function of the Bank of England

9. At the highest level, the Bank is responsible for monetary policy and financial stability, primarily through its Monetary Policy Committee, Financial Policy Committee and Prudential Regulation Committee.
10. It is responsible for the oversight and supervision of recognised payment systems, securities settlement systems and central counterparties, collectively, ‘financial market infrastructures’.
11. It is also the UK’s resolution authority with powers to manage the failure of banks, building societies, central counterparties and certain types of investment firms.
12. When acting in its capacity as the Prudential Regulation Authority (the “**PRA**”), it is responsible for promoting the safety and soundness of PRA-authorised persons, that is, deposit-takers, designated investment firms and insurance firms, and in the specific context of insurance, contributing to an appropriate degree of protection for those who are or may become policyholders.

13. The PRA also has two secondary objectives. These require it, when discharging its general functions in a way that advances its objectives, so far as is reasonably possible, to act in a way which facilitates effective competition in the markets for services provided by PRA-authorised persons in carrying on regulated activities and, subject to aligning with international standards, the international competitiveness of the UK economy and its growth in the medium to long term.

Role and function of the CMA

14. The CMA is an independent non-ministerial UK Government department and is the UK's principal competition and consumer protection authority. Established under the Enterprise and Regulatory Reform Act 2013, the CMA helps people, businesses and the UK economy by promoting competitive markets and tackling unfair behaviour. The CMA has a statutory duty to seek to promote competition, both within and outside the United Kingdom, for the benefit of consumers.

15. The CMA's main functions are¹

- a. investigating mergers that have the potential to lead to a substantial lessening of competition. If a merger is likely to reduce competition substantially, the CMA can block it or impose remedies to address such concerns;
- b. investigating businesses to determine whether they have breached UK competition law and, if so, to end and deter such breaches, including by fining businesses and seeking the disqualification of directors of the companies involved, as well as pursuing individuals who commit the criminal cartel offence;
- c. enforcing a range of consumer protection legislation, including in cases where the unfair treatment of consumers or the challenges they face in making choices suggests there may be a systemic market problem;
- d. conducting studies, investigations or other pieces of work into particular markets where there are suspected competition and consumer problems. The CMA can take action – and recommend action be taken by others – in markets where competition may not be working well;
- e. giving advice to policymakers and Ministers about the CMA's functions including how they can design and implement policy in a way that harnesses the benefits of competition and protects and promotes the interests of consumers;
- f. providing information and advice to people and businesses about rights and obligations under competition and consumer law;
- g. promoting stronger competition in the regulated industries (gas, electricity, water, aviation, rail, communications and health), working with the sector regulators;
- h. conducting regulatory appeals and references in relation to price controls, terms of licences or other regulatory arrangements under sector-specific legislation;
- i. providing technical advice, reporting and monitoring in relation to the UK internal market, through the Office for the Internal Market (OIM); and
- j. providing advice, reporting and monitoring in relation to government subsidies, through the Subsidy Advice Unit (SAU).

¹ The Digital Markets, Competition and Consumers Bill was introduced to Parliament in 2023. Among other things, it will give the CMA's Digital Markets Unit new powers to oversee a new pro-competition regime for digital markets. This MoU will be reviewed as necessary, if and when the Bill receives Royal Assent.

Principles of cooperation and sharing

16. The timely and focused sharing of relevant information between the parties, as facilitated by this MoU, will enhance their ability to exercise their respective functions, within the spirit of broader collaboration and to the extent permitted by law. This is for the purposes of promoting more favourable outcomes in furtherance of their respective statutory objectives.
17. This may include, but is not limited to:
 - a. Information on workstreams, investigations, specific issues of concern, policy proposals or policy developments that appear directly relevant to the other's role;
 - b. Information and data otherwise obtained during the exercise of either party's respective functions which appears relevant to the functions of the other;
 - c. Notifying the other about any relevant action contemplated (or taken) by a party which is or may be relevant to the functions of the other; and
 - d. Information obtained during the exercise of either party's respective functions that is or may be relevant for the purposes of any joint project or investigation.
18. The parties propose to facilitate effective joint working by:
 - a. Meeting and communicating regularly, at appropriate levels of seniority, to discuss matters of mutual interest;
 - b. Consulting one another at an early stage on any issues that might have significant implications for the other; and
 - c. Sharing (for comment), at an early stage, draft documents or publications that reference the other.
19. If a party considers that information it has gathered will be materially relevant to the other (in particular, in support of the effective identification of risks to the other's functions and objectives), then, subject to any legal restrictions on the disclosure of information (whether imposed by statute or otherwise), it will notify the other of the same.
20. To help each other carry out their respective roles, the parties may provide each other with technical assistance. Technical assistance for these purposes includes the sharing of subject-area knowledge and expertise as well as best practice.
21. The parties may agree to carry out joint projects in areas of mutual interest. Such joint projects will be subject to project-specific terms of reference agreed between the parties and any applicable legal restrictions.

Sharing Information – Constraints on disclosure of information and other legal requirements

22. The exchange of information is subject to such statutory, procedural, or other constraints that apply to the Bank and/or the CMA in relation to the sharing of information, from time to time.
23. The process for disclosure of information set out in this MoU does not override any restrictions or obligations but is designed to facilitate and assist disclosure where legally permissible.

24. All information sharing requests will be considered on an individual basis and each party must comply with all relevant information law requirements.
25. Part 9 of the Enterprise Act 2002 prohibits the CMA from disclosing 'specified information' which relates to the business of an existing undertaking or the affairs of a living individual unless a gateway or exception applies. However, the CMA may share certain types of information with the Bank, including for the purpose of facilitating the exercise of the Bank's statutory functions it holds under legislation specified in Schedule 15 to the Enterprise Act 2002.
26. The Bank collects information for various purposes, including for monetary policy, to meet its resolution functions and for the PRA to meet its supervisory functions. The Bank is similarly restricted from sharing such information except in certain circumstances and subject to express exceptions and gateways in legislation. Accordingly, the Bank may share certain types of information with the CMA, including for the purpose of enabling or assisting: (i) the Bank to discharge its own statutory functions; and (ii) the CMA to discharge its functions held under legislation specified in Schedule 1 to the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001.
27. Where a request for information is received by either party under data protection laws or the Freedom of Information Act 2000, the party which is the recipient of the request will seek the views, and fully consider such representations, of the other party where the information being sought under the request includes information obtained from, or shared by, the other party. However, the decision to disclose or withhold the information (and therefore any liability arising out of that decision) remains with the party in receipt of the request.
28. In as far as the parties are processing personal data pursuant to this MoU, they will ensure this is compliant with the UK General Data Protection Regulation and Data Protection Act 2018 (and any amending or superseding legislation).
29. Information might be provided to the parties by a third party under a contract or other memorandum of understanding containing confidentiality provisions and/or on the understanding that it is being provided in confidence and will not be disclosed. Should either party wish to disclose such information to the other party under this MoU and, provided it is legally permissible to do so, the parties will seek to minimise the extent that disclosure to the other is constrained by such agreements with third parties, and where these occur will, if appropriate, take reasonable steps to secure any necessary consents.

Information requests, timescales and method of exchange

30. The parties may request information from each other and will include the details of the information sought and why it would assist them to carry out their functions.
31. Each party may suggest a reasonable deadline for a response, including an explanation of any urgency. The party in receipt of the request will use its reasonable endeavours to provide a full reply and supporting documentation (where applicable) within the time-period agreed between the parties.
32. Appropriate security measures shall be agreed between the parties to protect information transfers in accordance with the sensitivity of the information and any classification that is applied by the party sending the information.

33. The process set out in this MoU is not prescriptive and requests and/or disclosures outside the terms of the process are not thereby defective.

Confidentiality and data breach reporting

34. Where confidential material is shared between the parties, it will be marked with the appropriate security classification.

35. The parties will protect the confidentiality and sensitivity of all information received from the other, and maintain effective controls designed to minimise the risk of inappropriate disclosures being made.

36. The parties may only use the information received from the other for the purpose for which it was received.

37. In the event a party loses (for instance, accidentally or by means of malicious software or hacking), or there is an unauthorised disclosure of, any confidential information received from the other, this party will bring this to the attention of the other without delay.

Regular engagement

38. Officials of the parties will regularly meet and communicate, at appropriate levels of seniority, to discuss matters of mutual interest.

39. A framework for such meetings will, as far as possible, be determined in advance to ensure attendance at the appropriate level and expertise.

Costs

40. Where the parties are assisting each other with an investigation or otherwise, both parties must be mindful of the costs such assistance may impose on the public purse. Acting in accordance with this MoU, in particular those in relation to information requests, will assist in achieving that objective.

Legal status and effect

41. This MoU does not give rise to legally binding obligations on the parties.

42. Nevertheless, the parties are committed to pursuing the aims and purposes of this MoU in good faith and intend to act in accordance with its terms on a voluntary basis.

Duration and review of the MoU

43. The arrangements covered by this MoU are, wherever possible, set out in terms providing sufficient flexibility for the relationship between the parties to develop in light of experience.

44. The parties commit to review these arrangements from time to time to evaluate their continuing fitness for purpose.

45. This MoU and the practices which it provides for will be reviewed by the parties at least every 5 years from the point it took effect or at the request of one of the parties.

46. Any changes will be subject to the agreement of both parties.

Signed by

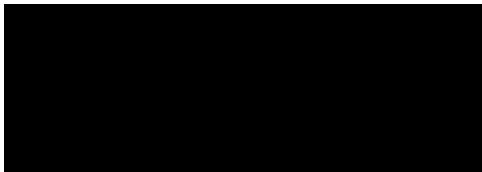


Date 14 December 2023

Andrew Bailey

Governor, Bank of England

Signed by



Date 13 December 2023

Sarah Cardell

Chief Executive Officer, Competition and Markets Authority