



Independent Networks
Association

CMA

Email: concurrencyreview@cma.gov.uk

20 October 2023

CMA Call for Input on a Review of Competition Concurrency Arrangements

I am writing to you on behalf of the Independent Networks Association (INA), in response to your call for evidence. I can confirm that this response is not confidential.

The INA represents the UK's Independent Network Operators which play a vital role in heating and energising homes and businesses, as well as providing water and wastewater services. Our members have delivered significant improvements in competition, choice and service for customers in the utility market and, together, own and operate utility infrastructure and networks that provide energy, heat, power, water and wastewater to over 4 million households and thousands of businesses right across the UK. While the competitive market for last-mile networks in water and wastewater, is relatively less mature than in energy, experience to date has demonstrated the significant potential for further development of the New Appointments and Variations (NAV) sector to deliver more substantial and wide-ranging benefits to both developers and end customers.

The INA and its members fully support the concurrency principles and arrangements set out for regulators. As the INA looks across a number of regulators, principally Ofgem and Ofwat, and across all areas of Great Britain, we see some of the variations and will focus our comments on that point.

Question 9: To what extent does concurrency enable the leveraging of the different expertise and experience of the CMA and regulators in competition law enforcement?

Whilst we see collaboration and joint working across regulators in the area of customer service, we see less evidence of cross working and leveraging of expertise in developing competitive markets. As stated in the preamble, the competitive independent network markets in electricity and gas has developed and embedded further and deeper than in water and wastewater, despite the policy of promoting competition in the three sectors for similar amounts of time. Some of the barriers facing competitive networks in water and wastewater are due to the lack of transparency and consistency of incumbents' tariffs. Ofwat have been operating a workgroup to solve this for over two years but no progress has been made. The issue has direct parallels to the issues faced by Ofgem in developing competition in electricity networks. It is unclear whether the regulators collaborate and learn from the issues experienced in different regulatory sectors in the area of competition



Independent Networks
Association

and we can see no evidence in this example. We believe learnings taken from the experience in the electricity sector could significantly enhance the competitive landscape in water and wastewater network provision. It would be helpful to flesh out this example and I would like to seek a meeting with the CMA team to discuss it.

Question 20: Are there other issues which the CMA has not identified and should consider when assessing effectiveness of concurrency?

One recent issue that has come up in water brings into question the role of Strategic Policy Statements and their interaction between the concurrency arrangements in place. Ofwat's June 2023 consultation proposed [changes to our NAV policy and assessment guidance](#). This was in response to a Strategic Policy Statement (SPS) from the Welsh Government¹ that made statements explicitly specifying that "the promotion of...competition in...water...is not a priority" and that "further promotion of competition is undesirable". The proposals from Ofwat consulted on providing additional hurdles for new companies entering the sector to take account of the SPS. The INA wrote to the Welsh Government to argue against their position and stating its misalignment to the provisions of the Water Industry Act 1991, particularly the following sections:

- Section 2, paragraph 2A requires Ofwat to "perform [its]...duties...to further the consumer objective", which is defined in paragraph 2B as being "to protect the interests of consumers, wherever appropriate by promoting effective competition".
- Section 2B, paragraph 1 provides for "Welsh ministers...to publish a[n SPS]" and paragraph 3 states that in "formulating a statement...Welsh Ministers...must have regard to the duties imposed on [Ofwat in] section 2".

The Ministerial response was clear on their position opposing competition in water in Wales. Therefore, the operation and effectiveness of the CMA and sector regulators' concurrency framework is also predicated on the actions and positions adopted by the UK and devolved Governments. This interaction should be considered as part of the review and the hierarchy of considerations for regulators.

I hope that this letter is helpful. If you have any questions on any of the issues I have raised or would like to discuss these in more detail, please feel free to get in touch.


Executive Director
Independent Networks Association

¹ <https://www.gov.wales/sites/default/files/publications/2022-12/water-priorities-for-ofwat-2022.pdf>