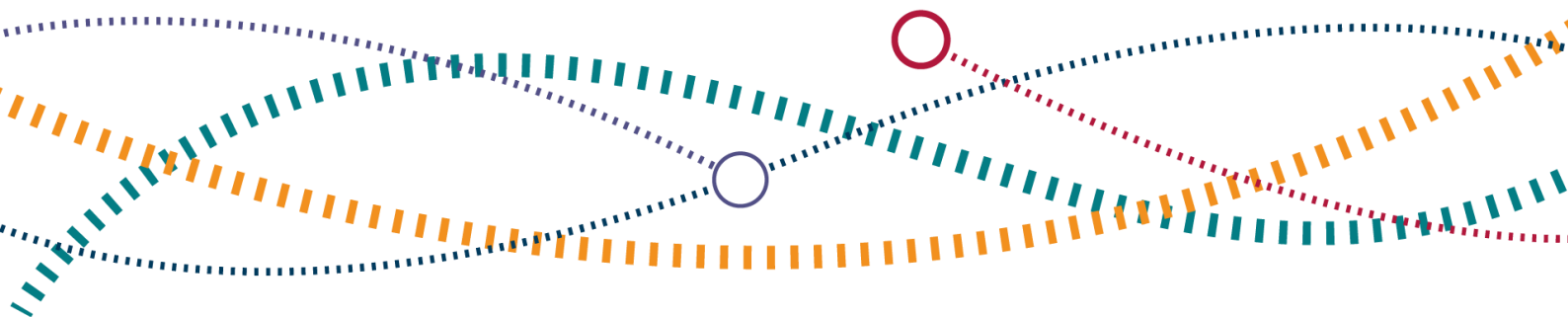


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ORR's response to CMA's consultation on the review of the competition concurrency arrangements

20 October 2023



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ORR's response

Summary

The concurrency framework ('concurrency') is a set of comprehensive rules for competition enforcement and agency cooperation in the regulated network industries. Concurrency plays an important role in enabling the Office of Rail and Road (ORR) to promote competition and efficiency in the railways sector and by so doing to get better value for money for passengers and for taxpayers.

ORR considers that, since the current concurrency arrangements came into force in 2014, concurrency has proven its importance and effectiveness in the regulatory landscape generally and specifically within the rail sector by enhancing competition policy and enforcement within our sector. Key points underpinning ORR's stance include:

1. the recognition that concurrency significantly broadens the regulatory toolkit we have at our disposal. Concurrency complements ex-ante regulatory tools and helps in capturing nuanced conduct and players not fully subject to traditional regulatory measures, such as licensing obligations.
2. our unique position, gained through ongoing inspections, monitoring, and economic regulation, which exposes it to sector-specific issues and concerns. Recent examples from the rail sector illustrate how this vantage point enables a more targeted and effective regulatory approach, addressing market intricacies comprehensively.
3. Maximising the deterrence effect is inherent in the sanctions available under competition law. This aspect is particularly useful typically for non-licensed firms in rail markets who are not subject to ex-ante regulation, emphasising the crucial role of competition law in fostering a competitive and compliant marketplace. This response to Competition and Markets Authority (CMA)'s call for input reflects ORR's commitment to promoting competition, efficiency, and value for money within the railways sector.

The remainder of this document is ORR's response to the CMA's call for input to its review of the competition concurrency arrangements.

Introduction

The Office of Rail and Road (ORR) is the independent economic and safety regulator for the railways in Great Britain (GB), and the monitor of performance and efficiency for England's motorways and trunk roads. ORR is also a designated national competition authority, with powers held concurrently with the Competition and Markets Authority (CMA) to apply competition law in markets for the supply of services relating to railways. As outlined in our [Business Plan Summary 2022-23](#), ORR is committed to fostering a safer railway, enhancing rail customer service, ensuring value for money from the railway, and improving highways. Our concurrent designation as a national competition authority aligns with these strategic objectives, primarily aimed at delivering value for money from the railway while also supporting better rail customer service.

Competition is an important driver of our functions to ensure value for money of the services provided to the railways sector. A strong example is our recently launched market study, a major case led by our inhouse competition team, while continuing to monitor implementation of recommendations in our previously completed market studies on signalling and ticket gates. We will consider complaints about anti-competitive behaviour against our prioritisation criteria and where appropriate open new cases under our competition enforcement powers. Since the beginning of the enhanced concurrency framework that the [Enterprise and Regulatory Reform Act 2013](#) (ERRA13) put in place, ORR has maintained a solid pipeline of potential competition cases by carefully considering complaints or utilising its own market monitoring powers to ensure that markets within the railways sector remain competitive. Indeed, some of our pipeline matters escalated to competition investigations over the years or generated valuable work under the markets regime.

As we approach the 10 years of Concurrency milestone, we are committed to continue cooperating with and providing advice and assistance to the Competition and Markets Authority (CMA) on broader competition matters such as rail-related mergers, subsidy control matters and related policy areas and offer similar support and cooperation to the Department of Transport (DfT) and to other stakeholders on matters related to rail reform and on access that are within our remit.

On 24 August 2023, the CMA published a call for inputs as part of its review of the competition concurrency arrangements, containing 20 questions. ORR welcomes the opportunity to share its views with the CMA in relation to the review of the competition concurrency arrangements. This document sets out our response to those 20 questions.

Our responses to the CMA's questions revolve around the two main considerations set by the CMA in its call for input:

- a. how concurrency improves the effectiveness of the sector regulators in promoting competition in their respective sectors; and
- b. how concurrency improves the effectiveness of the UK's competition regime.

Response

Concurrency as part of sector regulation

1. Question 1: Have the concurrent Competition Act 1998 enforcement powers proven to be effective tools to remedy specific cases of anti-competitive harms in the regulated sectors? As part of this issue, how do sector regulators evaluate whether competition law enforcement would be a more appropriate course than either: (i) enforcing an existing ex ante rule (ii) setting a new ex ante rule, and are the choices that sector regulators make effective?

- 1.1 The concurrent Competition Act 1998 (CA98) enforcement powers have indeed proven to be effective tools in addressing specific cases of anti-competitive harms in the regulated rail sector, particularly in areas of investigated ex-post harm. Guided by the provisions outlined in the CA98 and informed by the principles articulated in [ORR's guidance on the enforcement of the Competition Act 1998 in relation to the supply of services relating to railways](#) (our Guidance), ORR adopts a robust and comprehensive approach in its evaluations:
- 1.2 Firstly, ORR assesses agreements between undertakings under the legal framework of Chapter I of the CA98. This assessment encompasses investigations into agreements that may appreciably prevent, restrict, or distort competition, including informal cooperation and concerted practices. ORR is particularly attentive to agreements that fix prices, control production, limit markets, or apply dissimilar trading conditions. An example of our work in this area is [the Railway Assessment Centre Forum \(RACF\) investigation](#) where the choice between competition law enforcement, enforcing existing sector-specific rules, or setting new ex ante rules was made based on a comprehensive assessment of the regulatory landscape and in light of the primacy obligation.¹ ORR's decision-making process for this investigation weighed the nature and extent of anti-competitive behaviour, evaluating the impact on competition and any sector-

¹ An obligation on each sector regulator to consider whether it would be more appropriate to proceed using its Competition Act 1998 powers, before they can take certain regulatory actions (typically, enforcement of a regulatory requirement).

specific legislation relevant to the matter and whether the use of our competition powers would be the most suitable tool to address harm.

- 1.3 ORR's approach is anchored in its commitment to choose the most effective and proportionate regulatory intervention. The nature of CA98 enforcement powers provides ORR with a versatile toolkit to address a spectrum of anti-competitive concerns, complementing ex-ante regulatory tools and capturing conduct that might fall outside the purview of sector regulation.
- 1.4 Secondly, when addressing dominance issues under Chapter II of the CA98, ORR applies a similar, comprehensive approach. Our sector deals with heavy infrastructure, where it is very difficult to duplicate or multiply networks and this is why we have a very developed access and safety regime. Factors such as access to the network, market share, barriers to entry, presence of competitors, and countervailing buyer power are heavily considered within the context of the railways infrastructure . ORR's extensive knowledge of health and safety in the railways sector is leveraged when assessing arguments related to conduct that may be considered objectively necessary or exempt for health and safety reasons.
- 1.5 In summary, ORR's experience with using its CA98 enforcement powers, complemented by ORR's guidance, underscores the efficacy of concurrency in remedying specific cases of anti-competitive harms. It shows an effective decision-making that aligns with ORR's commitment to promoting competition in regulated sectors and its strategic objectives.

2. Question 2: Does the ability for sector regulators to conduct market studies under the Enterprise Act 2002 help them achieve their objectives?

- 2.1 The ability for ORR to conduct market studies under the Enterprise Act 2002 is a valuable tool that aids in achieving regulatory objectives, primarily our duty to keep the markets within the railways sector under review. Market studies empower us to conduct in-depth assessments of market dynamics, identify broader or systemic competition issues, and propose targeted interventions to enhance competition. Market studies are also a key tool for regulators to gain intelligence from across the markets they regulate, understand the practical impact of sector-specific technological development and innovation and in this way to monitor the competitive situation in railway markets. Market studies fill the important space between competition enforcement and ex ante regulation and, if used consistently, they can create significant benefits.

2.2 For the rail sector, the [2019 Automatic Ticket Gates and Ticket Vending Machines Market Study](#); the [2021 Signalling Market Study](#), or the ongoing [Railway Station Catering Market Study](#) have provided insights into market structures, conduct, and performance, allowing ORR to address competition concerns effectively. The information derived from market studies contributes to evidence-based decision-making, particularly in form of remedies and recommendations to key stakeholders, enabling regulators to design and foster a more competitive environment in their respective sectors.

3. Question 3: Does the ability for sector regulators to refer markets to the CMA for a market investigation help them achieve their objectives?

3.1 The ability for sector regulators to refer markets to the CMA for a market investigation is a crucial mechanism that supports the achievement of regulatory objectives. In appropriate cases where there are complex competition concerns, referral enables sector regulators, such as ORR to engage the expertise and resource of the CMA to conduct comprehensive and independent assessments of markets that require more time, more resources and remedies in different nature to those a market study can implement. Market Investigation References (MIRs) to the CMA ensure:

- (a) In-depth analysis: The CMA, as the national competition authority, possesses extensive resources to conduct comprehensive assessments, ensuring a nuanced understanding of complex market dynamics. It is also able to leverage experience from markets that may have similar features or combinations of features that adversely affected competition in another part of the economy.
- (b) Pooled expertise: MIRs provide an opportunity to utilise and combine the diverse expertise of both sector regulators and the CMA. Sector regulators, being specialists in their respective industries, bring valuable insights into sector-specific challenges and nuances that can contribute to CMA's understanding of the referred market. The collaboration ensures a well-rounded examination of competition issues within a regulated market, which in the long-term be beneficial for consumers and businesses.

3.2 This complementary approach between market studies and market investigations, following a referral from a regulator, enhances the effectiveness of regulatory actions, contributing to the overall goal of promoting competition in the regulated sectors.

4. Question 4: Sector regulators also carry out market reviews under sectoral legislation. Does concurrency have an impact on how sector regulators carry out these reviews? For example, does it affect the extent to which competition issues are a focus in these reviews?

4.1 Concurrency plays a pivotal role in shaping how sector regulators, particularly ORR, conduct market reviews under sectoral legislation. The presence of concurrent competition powers not only reinforces the focus on competition issues within these reviews but also adds a valuable dimension to ORR's capacity to study markets within its jurisdiction and remedy features that impede the competitiveness of these markets.

4.2 Market study powers enable ORR to look more broadly and holistically at how the rail market is functioning and intervene with clear-cut remedies or by using the referral mechanism, where appropriate, than it would be the case under the regulatory powers of the Railways Act alone (such as when conducting market reviews under the Railways Act 1993). This added dimension of enforcement enhances our regulatory toolkit and allows for more targeted and effective intervention.

4.3 Concurrency also encourages sector regulators to seamlessly integrate competition analysis into their market reviews, ensuring a robust examination of market performance and addressing issues that may impact competition. This integrated approach not only strengthens the effectiveness of market reviews but also aligns them with broader competition objectives, reinforcing our commitment to promoting fair and competitive markets within the rail sector and by so doing to achieve better value for money for passengers and taxpayers.

5. Question 5: Does concurrency have an impact on how sector regulators carry out their wider regulatory functions, particularly in terms of the promotion of competition in the regulated sectors?

5.1 Concurrency significantly contributes to how we carry out our wider regulatory functions, particularly in promoting competition within the regulated rail sector. ORR, as a sector regulator, possesses an in-depth understanding of the special features of the railway industry. This means we have a good understanding of the different industry stakeholders, including rail operators, infrastructure providers,

and other industry players and of the market dynamics so as to be able to quickly understand arising issues and provide robust solutions.

6. Question 6: What impact, if any, does maintaining the skills and expertise to exercise the concurrent powers have in terms of costs to sector regulators?

- 6.1 The investment in maintaining the skills and expertise necessary to exercise concurrent powers is integral for concurrent regulators, like ORR. Having a specialised competition team, ORR can attract staff capable of handling a greater portfolio of work which enhances ORR's ability to deliver value for money and better rail market outcomes.
- 6.2 While this response does not aim to provide an exact break-down on delivery costs, as this seems to be outside the scope of this call for input, we can confirm that there is a minimum scale of staff numbers and areas of expertise required so to run and maintain an efficient competition team. ORR has to ensure a judicious allocation of resources to maintain its skilled team that, in turn, adds value not only to concurrency enforcement but also to the organisation's broader objectives and internal staff training.
- 6.3 ORR significantly invests in staff competition training and offers, where possible, development and progression opportunities within this area of work. It also ensures that competition work remains a strategic priority and its trained and experienced in-house competition team are constantly involved either in specific enforcement, pipeline or necessary policy work. This approach leads to retaining specialised personnel, the benefits of which extend beyond concurrency enforcement.
- 6.4 Staff engaged in concurrency-related work also play a pivotal role in providing advice across the organisation on broader topics related to public law and sector-specific work. This expertise contributes to the organisation's regulatory and broader strategy work.
- 6.5 ORR is therefore committed to:
- (a) recruitment and retention of competition specialists;
 - (b) fostering the development of competition expertise among existing staff;

- (c) promoting internal secondments to the competition team within ORR to underscore the valuable skill set that engagement in competition work offers; and
- (d) promoting external secondment opportunities, within the UK Competition Network (UKCN) (i.e. the CMA and other sector regulators).

Concurrency within the competition regime

7. **Question 7: Are existing mechanisms to coordinate between the CMA and sector regulators sufficient to ensure consistent outcomes and coherence in the competition regime?**

- 7.1 ORR's view is that the existing mechanisms to coordinate between the CMA and sector regulators have generally proven to be effective. We welcome the regular communication during casework, the quarterly bilateral meetings, the sharing of expertise via know-how or case-specific events, all of which occurs frequently from both sides and promotes each authority's work. A key area of collaboration is the exchange of essential information under the existing legal disclosure gateways that is necessary to carry out our functions and contributes to a cohesive and collaborative approach to competition enforcement. Much of this is achieved through the UK Competition Network.
- 7.2 We welcome the continuous sharing of expertise and the use of information disclosure gateways under specific regulation and our memoranda of understanding as this guarantees efficient collaboration. We would also welcome more facilitation of secondment opportunities between the CMA and the sector regulators as a way to increase expertise and to promote professional development of staff and enhance overall effectiveness of the concurrency regime. We believe that structured secondment opportunities between CMA and ORR is an important way to increase individual and team-expertise, promote our staff's professional experience and contributes to more staff retention within the broader Civil Service.

8. Question 8: To what extent does the cooperation between the CMA and the sector regulators that results from the concurrency arrangements give rise to (i) more effective competition law enforcement; and (ii) benefits that extend beyond more effective competition law enforcement?

8.1 ORR considers that:

- (a) The cooperation resulting from concurrency arrangements significantly enhances competition law enforcement between the two agencies. ORR, with its sector-specific experts including engineers, inspectors, operations professionals and other safety and technical experts, possesses in-depth knowledge of the railway markets. The CMA brings a unique set of resources and expertise in general competition enforcement that complements ORR's capabilities. ORR is best placed to offer its sector-specific knowledge and how competition materialises there, the CMA on the other hand provides crucial expertise from its wide experience in general competition law enforcement and it can be a valuable critical friend to ORR's competition cases.
- (b) Concurrency also facilitates the sharing of enforcement responsibilities with the CMA. It ensures a more evenly-distributed approach to enforcement, lifting the responsibility from the CMA to maintain expertise and put resources in a large number of key sectors, where sector regulators can easily fill this space and alleviate the burden of overload from the CMA colleagues. In this way, the concurrency regime ensures balanced monitoring of the entire UK economy, fair and effective enforcement and allows for greater collaboration and efficiencies through shared responsibilities.

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

9.1 Concurrency serves as a powerful mechanism to leverage the expertise and experience of both the CMA and sector regulators, like ORR. ORR brings industry-specific knowledge and insights, while the CMA provides general competition law expertise. A good example is our recent [2021 Signalling Market Study](#). In this study, ORR identified ways in which competition was being stifled in the signalling market, leading to recommendations for improvements. Through active

collaboration with the CMA, we shared critical insights and findings, enhancing the overall analysis of both ORR and the CMA.

9.2 Our cooperation with the CMA expands also on other areas beyond the strict boundaries of concurrent powers. A good example of cooperation and exchange of expertise are merger investigations within the regulated sectors. Our cooperation was evident in the [CMA's investigation of Hitachi's proposed acquisition of Thales Ground Transportation Systems business](#). The findings of ORR's signalling Market Study, published in November 2021, played an important role in the CMA's analysis. Building on this important foundation, we worked closely with the CMA during the investigation and provided our sector-specific expertise, analytical views on the transaction and other relevant evidence, ensuring that our industry-specific insights could inform CMA's evaluation of the merger.

9.3 The recent outcomes in ORR's signalling market exemplify how this collaborative model contributes to fostering a competitive environment, ensuring value for money, and enabling innovation in regulated sectors.

10. Question 10: To what extent does concurrency improve overall deterrence for breaching competition law both (i) across the economy and (ii) within the regulated sectors specifically?

10.1 ORR considers that:

- (a) Concurrency improves overall deterrence across the economy by promoting a consistent and robust approach to competition law enforcement. The prospect of coordinated actions by both sector regulators and the CMA enhances the deterrent effect, signalling a united front against anti-competitive behaviour.
- (b) Within regulated sectors, concurrency reinforces the message that anti-competitive conduct will be thoroughly investigated and addressed. It's important to note that while certain companies operating within the regulated space may not be subject to ex-ante economic regulation, concurrency widens its scope to address a broader spectrum of players. Unlike entities with specific licenses, such as Network Rail, many firms within regulated sectors operate without the same ex-ante restrictions, even if they wield significant market power. Recognising this diversity, concurrency acts as a powerful deterrent, sending a clear message that all forms of potentially anti-

competitive conduct, agreements, and market practices will be subject to comprehensive scrutiny and potentially significant fines and other remedial action. In doing so, it contributes significantly to cultivating a competitive environment that transcends the limitations imposed by traditional regulatory licences.

- (c) It is also the case that not all concurrent regulators have concurrency across all the sectors they otherwise regulate or monitor. This is the case with ORR, whose concurrency powers are currently confined to the rail sector (and not markets related to highways for example). In such instances, close cooperation between the CMA and the sectoral regulator will be of particular importance and will enhance the overall regime.

11. Question 11: Does concurrency have an impact on the overall number of Competition Act 1998 investigations, market studies, and/or market investigation references, compared to if these powers were reserved solely to the CMA?

- 11.1 The ability of sector regulators to address competition issues directly within their industries is likely to lead to more sector-specific interventions that have the potential to improve the overall good functioning of these sectors. The CMA alone would be unlikely to have the resources (or insights from sector-specific work) to investigate a number of the competition concerns that arise in regulated markets.
 - (a) Our market studies on [Automatic Ticket Gates and Ticket Vending Machines in 2019](#), [Signalling in 2021](#), and [Railway Station Catering](#) (ongoing) exemplify how sector-specific insights and resources enable us to delve into intricate competition issues that might escape the purview of a broader regulatory body like the CMA.
 - (b) Likewise, our CA98 cases, such as the [investigation of a suspected abuse of dominant position by Freightliner in the provision of deep-sea container rail transport services between ports and key inland destinations in 2015](#) and our [investigation into the conduct of DB Schenker regarding the pricing of a contract for petroleum haulage by rail in Great Britain in 2010](#). These cases underscore the tangible outcomes stemming from our sectoral work, showcasing how the ORR's engagement significantly contributes to uncovering and addressing competition concerns that might not have come to light without our targeted industry focus.

11.2 For this to be best achieved, we believe it is important to continuously support the concurrency framework, to enhance inter-agency cooperation and to promote competition policy and enforcement within the regulated sectors.

12. Question 12: To what extent does the sharing of concurrent powers result in efficiencies or inefficiencies in the use of public resources across the competition regime? For instance, would the resources currently employed across regulators for the purposes of concurrency be used more or less effectively if concentrated in a single body?

12.1 We believe that the specialist competition resources currently employed across regulators for the purposes of concurrency are used effectively to optimise efficiency within most regulators, including the ORR.

12.2 Competition teams within regulators are typically part of larger teams or directorates and so benefit from the economies of scale of being part of larger group or organisation (for example, in terms of management oversight, governance and support functions (eg HR, IT, facilities)).

12.3 Integration within sector-specific organisations provides efficiency gains through economies of scope. Much competition work is complementary to the regulatory policy, strategy and consumer protection work that sector regulators undertake. Competition teams are often able to contribute to the work of the wider organisation without diminishing the effectiveness of their competition investigation or enforcement work. For example, when preparing its advice to government on rail reform, ORR drew on the expertise of its competition team to provide insights and advice on the competition matters that might (or might not) arise under different options for rail reform.

12.4 For the reasons given below we would not recommend concentrating competition resources in a single body as we believe this would diminish the effectiveness of competition policy work and enforcement in the regulated sectors:

(a) Sharing concurrent powers contributes to efficiencies by leveraging sector regulators' specialised knowledge.

(b) Concentrating all resources in a single body would risk losing sector-specific insights and might adversely impact retention of expert staff. Sector regulators offer tangible career paths not only in competition enforcement,

but also into other areas of economic regulation, consumer protection work or wider enforcement activity.

13. Question 13: What impact, if any, does having multiple enforcers of competition law have on the costs associated with ensuring compliance with competition law from the perspective of businesses?

- 13.1 ORR does not consider that having multiple enforcers leads to increased compliance costs for businesses. Even though, businesses must navigate the regulatory landscape, the concurrency framework offers clear rules of case allocation and cooperation between the CMA and the sector regulators that ensures that only one agency would pursue a case.
- 13.2 The UK concurrency framework is designed in a robust way to avoid cases of double jeopardy and competition enforcement processes, practices and guidance are streamlined between regulators to ensure clarity and transparency. The UKCN aims to harmonise communication and guidance between regulators to mitigate these costs and enhance clarity for businesses.
- 13.3 ORR believes that this approach has been successful so far and we have no cases to report where there has been confusion on which agency is (or should be) the investigating or enforcing body.

14. Question 14: What benefits does the ability for sector regulators to conduct market studies and refer markets to the CMA for market investigations have for the operation of the markets regime? Are there any downsides in the sector regulators having concurrent powers to conduct market studies and make market investigation references?

- 14.1 For ORR, the ability to conduct market studies and make references to the CMA enhances our toolkit by providing the capacity to take a broader and more comprehensive look at our markets. Often this allows us to address issues in rail markets that go beyond the traditional reach of ex-ante economic regulation – i.e. beyond matters related to the conduct of incumbent licensed infrastructure managers like Network Rail. Examples include the [2019 Automatic Ticket Gates and Ticket Vending Machines Market Study](#); the [2021 Signalling Market Study](#), and the ongoing [Railway Station Catering Market Study](#)).

- 14.2 This not only contributes to the effectiveness of our regulatory functions but also ensures that market interventions are well-informed and aligned with the unique challenges and opportunities present in the rail sector. Remedies can combine competition enforcement and use of sector regulation tools such as licence modifications for more enhanced outcomes.
- 14.3 cooperation between sector regulators and the CMA can ensure that potential shortcomings are understood and avoided, ensuring a balanced and effective application of concurrent powers.
- 14.4 The only downside to the concurrency regime would be if the sector regulators did not actively use (and appropriately resource) their competition functions. This is not the case at ORR and we are not aware that is the case at other sector regulators.

Improvements to concurrency

15. Question 15: Are there improvements that could be made to how the sector regulators exercise their concurrent powers?

- 15.1 Acknowledging the successful collaboration that has been achieved on the completion of the first 10 years of concurrency functions, there is still valuable room for strengthening the regime by ensuring consistent communication, and enhancing sharing of knowledge and best practice with sector regulators.
- 15.2 While regular training programmes and knowledge-sharing initiatives are beneficial, additional measures such as short secondments can provide an excellent opportunity for regulators to immerse themselves in each other's environments (please see our response in question 7 further above). This hands-on approach fosters a deeper understanding of the challenges and priorities faced by different regulators, contributing to a more comprehensive and nuanced application of concurrent powers.

16. Question 16: Are there improvements that could be made to the framework in which the sector regulators exercise their concurrent powers, e.g., resourcing or funding for the concurrent functions, or the scope of the concurrent jurisdictions?

16.1 While we do not suggest any major in principle improvements to the framework, we note that maintaining high functioning standards of the regime should always be an objective for all involved agencies to pursue. In this spirit, we would like to highlight the following:

- (a) Resources and staffing: Maintaining adequate resources and funding for concurrent functions will always be paramount to enable effective competition law enforcement. Hiring and retaining specialised staff is crucial for the regulators' ability to exercise concurrent powers within their sectors.
- (b) Powers and jurisdiction of sector regulators: Providing clarity on the scope of concurrent jurisdictions will continue to be crucial, to allowing regulators to navigate their roles effectively. Consistent case allocation to the best-positioned agency should be an objective of the concurrency framework and sector regulators count on the CMA's continued support for this.

17. Question 17: Are there improvements that could be made to the way in which the CMA exercises its leadership role in the concurrency arrangements, including, for instance, its preparation of the annual concurrency report?

17.1 ORR acknowledges the strong foundation laid by the CMA for the effective operation of the concurrency framework. Regulators welcome CMA's ongoing support for full use of concurrent powers within the sector.

17.2 In addition to the point above, we summarise again a few distinct points we have already made elsewhere in our response:

- (a) the continuation of clear communication of priorities between the CMA and the sector regulators that will take into account the strategic objectives of all involved agencies;

- (b) more engagement and collaboration sharing best-practices and know-how (e.g. shared seminars and training), by actively communicating these among the regulators and the CMA.

18. Question 18: Are there improvements that could be made to the arrangements for cooperation (including both those arrangements with a statutory basis and those set out in guidance and the memorandums of understanding)?

18.1 Regarding cooperation arrangements, potential improvements could include bilateral periodic reviews on cooperation memoranda. Additionally, exchanging and discussing concrete working examples or case studies could play a pivotal role in ensuring a clear delineation of roles and responsibilities, especially during the case allocation stage or concerning digital matters. These practical measures aim to streamline and improve the effectiveness of cooperation mechanisms, ensuring a more robust foundation for collaborative efforts.

19. Question 19: Are there improvements that could be made to the arrangements for multilateral cooperation, particularly through the UKCN?

19.1 Improvements to multilateral cooperation could involve strengthening the UKCN by:

- (a) further promotion of regular information exchange and communication and in particular to involve regulators in policy discussions on broader matters of competition enforcement;
- (b) supporting initiatives for sharing workforce between the CMA and sector regulators;
- (c) further facilitation of joint training programmes; and
- (d) addressing any potential barriers to effective collaboration among regulators, by for example creating or promoting practical cooperation protocols for sharing advice, working examples, relevant disclosure of information and staff development schemes.

Other issues

20. Question 20: Are there other issues that the CMA has not identified and should consider when assessing the effectiveness of concurrency? If so, please explain further.

20.1 None identified.

Next Steps

We hope this submission will assist the CMA in its review of the effectiveness of the UK's concurrency arrangements and we are happy to discuss any aspects of this submission with the CMA.



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