

MOSL Response to CMA Review of the competition concurrency arrangements

Introduction

MOSL is pleased to share its views as part of the CMA's [review of the competition concurrency arrangements](#).

MOSL operates the non-household (NHH) water retail market that was opened up to competition in 2017 allowing all non-households to switch and choose a different retailer if they wish. The market has come a long way since it opened with larger customers in particular experiencing the service and cost benefits of switching. But the general view shared by the regulator Ofwat is competition is not yet working for ALL customers to the extent envisaged at market opening.

MOSL is generally supportive of the current sharing of arrangements between CMA and Ofwat our regulator. We can see why sector specific knowledge is necessary for implementation, for example the recent investigation into the sharing of data from some of the smart meters installed by Thames Water.

We believe there is a need for clarity:

- to ensure the guidance around competition law is clear from CMA to regulators and that is communicated clearly by regulators to market participants. Some uncertainty has impacted behaviours in the NHH market where Ofwat has since clarified competition law needn't have been such a concern e.g. wholesalers ability to offer water efficiency services direct to NHH customers
- in areas where there have been previous investigations where the introduction of new rules could prevent further investigations down the line
- to ensure regulators are fully cognisant on the impact their own policies could be having on competition when they are balancing the need to develop competition with the level of bills and other priorities like the environment

Questions for stakeholders

Concurrency as part of sector regulation

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?

We are unable to comment on how Ofwat has evaluated if competition law enforcement would be more appropriate than the actions outlined. However, we have seen Ofwat launch investigations into behaviour in the NHH market that have caused concerns around the impact of competition (e.g. [Thames Water](#))

[retailer access to smart meter readings investigation](#)). This has allowed Ofwat to implement remedies that seek to address these concerns.

While these remedies have addressed specific concerns, the area the above investigation focused on remains an area where there is potential uncertainty. A new regulatory rule around data sharing could provide more clarity and reduce the potential for further investigations – MOSL is working to inform what this could look like in particular with an expected rise in more granular data from smart meters in the coming years.

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?

Ofwat publishes an annual report on the state of the NHH water retail market which assesses, among other things, the market share of NHH water retailers and how this has changed over time since market opening in 2017.

While we are generally supportive of current concurrency arrangements, we think more active competition would help unlock value in the market. As part of these reviews we would therefore like to see Ofwat have a stronger focus on why competition may not be working and taking steps to unlock this.

However, given the need for Ofwat to balance keeping bills low, the environment, water security and competition, we think it is right that sector regulators have concurrent powers, rather than these being vested solely in the CMA.

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?

From our experience of the NHH market, we are aware of the impact that competing priorities (cost of living/keeping bills down) has on the amount of focus that Ofwat has felt able to place on promoting competition. We are unable to comment on the full extent of concurrency on this. There is also a growing focus on the need for regulators to consider enabling growth among their objectives.

The need to re-promote competition was highlighted in Ofwat's response to the recent review of default Retail Exit Code (REC) tariffs for customers who haven't switched since market opening. This highlighted a decline in awareness of the ability for NHH customers to switch over time since the market opened in 2017 and a lower awareness among newer businesses founded after the initial promotion of the market opening. An action Ofwat has taken off the back of this is to update the [Open Water](#) website to promote the market and potential benefits from switching/re negotiating.

We consider that government priorities for the water sector (as set out in the Strategic Policy Statement) may have a greater influence on the extent to which Ofwat as the water regulator promotes competition in the NHH water sector than the concurrency arrangements.

Concurrency within the competition regime

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?

We believe there are potential benefits of the existing regime where sector regulators like Ofwat with in depth sectoral knowledge are best positioned to apply areas of competition law in balance with competing priorities like keeping bills low and the environment. It could end up with duplication if concentrated within the CMA if a large amount of sector specific resource was required if that could only come from the regulator.

To ensure this can be best applied, there is a need for clarity in the guidance and direction given under concurrent powers to regulators about what does and doesn't breach competition law.

Improvements to concurrency

Other issues

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

We'd support the review considering the extent to which the CMA, government and regulators may benefit from working together more closely to consider the extent to which competition has developed as intended in sectors where it has been introduced. This feels like an area that can be left to regulators after markets have opened.