



Oct 2024

## Introduction

The CMA has sought views with respect to the concurrent competition powers between the CMA and other regulators. The Government has in addition announced a review of all UK regulators<sup>1</sup>. We welcome both consultations and support regular operational reviews, to ensure that UK businesses and consumers are effectively served by regulatory bodies.

Markets and technologies are developing at much faster speeds than was the case historically. Regulatory bodies need to keep a pace with the change, remaining fit for purpose, sufficiently funded, while offering value for money. More frequent organisational reviews, reorganisations and process collaboration are likely to be required. The UK Competition Network has been established to manage co-operating of regulators with competition powers. In addition, our key regulators have recognised that technology and policy issues cross market boundaries and created the DRCF to ensure greater co-operation. These bodies seek to ensure consistent use of powers, advance and share new learning, ensure joined up policy development. The regulators have recognised overlap duplication and the need to ensure work is synchronised on key topics.

We are keen to work with Government and our regulatory bodies to identify further best practise and excellence in decision making processes, improve transparency for stakeholders and to ensure costs are reasonable and proportionate when it comes to the cost of regulation on industry and the funding of regulatory bodies.

## Competition cases

The UK's economic interests and the interests of consumers should be supported by a respected, experienced, suitably resourced competition bodies. Timely and cost-efficient case management is also important to minimise costs ultimately borne by consumers. We lack data to be able to comment on quantitative basis as to whether the distributed powers are optimal in terms of outcomes and costs. We would propose that data is collected for the Government's wider review of regulators. The following observations are made absent access to data and more detailed operational insight.

The reporting from the UK Competition Network identifies that the CMA conducts the largest volume of the competition caseload. As the primary competition body, we consequently assume the CMA to be the centre of excellence for competition case management. We recognise and value the sector expertise that individual regulators have. There are obvious merits in including within case teams sector experts.

In terms of Ofcom's use of the Competition Act in a case of direct relevance to us, the most notable experience was the Wholesale calls case<sup>2</sup>. Ofcom took just shy of 5 years to conclude a Competition Act investigation into the Wholesale Calls market. After issuing a statement of objections and confirming margin squeeze, a no case for action decision was reached, due to the market evolving away from the product in question (carrier pre-select). As this was considered a legacy product the need to demonstrate and isolate the actual harm from the margin squeeze conduct was not possible to identify on its own, as consumer behaviour had shifted towards newer products. Had the case been completed within 18 or even 24 months, then a different conclusion could quite possibly have been reached.

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<sup>1</sup> [Government launches review of regulators to cut red tape and bureaucracy - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/government-launches-review-of-regulators-to-cut-red-tape-and-bureaucracy)

<sup>2</sup> [https://www.ofcom.org.uk/about-ofcom/bulletins/enforcement-bulletin/all-closed-cases/cw\\_988#:~:text=Ofcom%20has%20received%20complaints%20from,82%20of%20the%20EC%20Treaty.](https://www.ofcom.org.uk/about-ofcom/bulletins/enforcement-bulletin/all-closed-cases/cw_988#:~:text=Ofcom%20has%20received%20complaints%20from,82%20of%20the%20EC%20Treaty.)



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Our experience demonstrates where Competition Act concerns exist, they should be resolved within a maximum of 18 months and regulators should be resourced to achieve this. This may require a new approach where sector regulators pass the case to a common resource (like the CMA) to complete on their behalf (perhaps assisted with specialist sector oversight).

## Market studies

Market studies are one of the legal tools available to collect market data and insight to understand the functioning and competitive basis of a market particularly due to technological advancement. Sector regulators have not made use of their power to conduct market studies until recently. Of relevance to us are the market studies on mobile ecosystems and cloud. In 2022 the CMA concluded a market study into mobile ecosystems which considered the market power of Apple and Google in devices and operating systems, app stores and web browsers<sup>3</sup>. Ofcom has just completed its first market study into the Cloud Market, concluding with an onward market reference to the CMA.

### *Opportunities to synchronise work packages where markets may have relationships should be pursued*

The utility of market studies could be more robust. In August 2022 the CMA concluded a market study on mobile ecosystems. It identified issues that span into the adjacent mobile connectivity market suggesting that it may be relevant to a set a code of conduct under the DMU SMS regime to manage the risk of digital gatekeeper market power<sup>4</sup>. The CMA gives no consideration in its market study as to relevance of OEM and MNO relationships and MNO and their customer relationships, both of which will shape the consumer experience and consumer choices. Over a similar period Ofcom was separately conducting its mobile market strategy review, concluding December 2022. Ofcom refers to the CMA findings<sup>5</sup> but gives little weight to the findings and does not add to the body of analysis. A closer tie up between these two work packages could have resulted in a richer information set and the opportunity to understand the full ecosystem value chain.

### *The widest possible market scope should be studied*

Ofcom's cloud market study set a scope limited to public cloud infrastructure as a service and platform as a service. Out of scope were private cloud services used by network operators and the consequential relationship with service quality and service cost in communications markets, which Ofcom regulate. We recognise that market studies have duration limits and are expensive to run. This however means that the likelihood of returning to a market to study further additional factors is remote and therefore there is a case for a single full breadth study with appropriate resources to facilitate this.

### *Prioritisation during the DMU establishment period will limit the scope for sector regulators to conduct studies*

The statutory timescales for referrals require immediate allocation of finite CMA resources. There is undoubtedly discussion and negotiation between the CMA and sector regulators before market studies proceed to ensure that overall, the CMA is sufficiently resourced to carry out the highest priority cases. The upcoming period, whereby the DMCC bill is enacted will be a very busy period for the CMA/DMU. The extent

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<sup>3</sup> [Mobile ecosystems market study - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/mobile-ecosystems-market-study)

<sup>4</sup> Annex M Box M1 [MEMs - Appendix M 2.pdf \(publishing.service.gov.uk\)](#)

<sup>5</sup> [Conclusions paper: Ofcom's future approach to mobile markets and spectrum](#) 4.53 – 4.54 and Annex A 3.20 -



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of work will naturally result in the need to prioritise. In order to ensure optimal utility of enforcement actions to the UK economy and consumers, we envisage there will be an evaluation process, which includes the sectors regulators, of how the case workload and SMS designation workload will be prioritised. There should be transparency around this process with other impacted stakeholders able to contribute. Wider transparency is necessary to mitigate the burden placed on companies when they must engage with multiple regulators or even clarify which regulators, they need to approach<sup>6</sup>.

The Cloud market study has demonstrated that the ability to proactively review a market is an important competition tool which can address market failure at any earlier stage than a competition law case. Sector regulators will be closest to the market conditions of their sector to identify the need for a particular market study to be conducted. A pragmatic decision with respect to whether the CMA or regulator takes the lead on the study, should be based on the availability of resources at any time.

## About Vodafone

Vodafone is a leading telecommunications company in Europe and Africa. Our purpose is to “connect for a better future” and our expertise and scale gives us a unique opportunity to drive positive change for society. Vodafone is the largest mobile and fixed network operator in Europe and a leading global IoT connectivity provider. We operate mobile and fixed networks in 21 countries and partner with mobile networks in 48 more. As of 30 September 2020, we had over 300m mobile customers, more than 27m fixed broadband customers, over 22m TV customers and we connected more than 112m IoT devices.

Vodafone is also taking significant steps to reduce our impact on our planet by reducing our greenhouse gas emissions by 50% by 2025 and becoming net zero by 2040, purchasing 100% of our electricity from renewable sources by 2025, and reusing, reselling or recycling 100% of our redundant network equipment.

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<sup>6</sup> Quote from Sir P Vallance