

## Concurrent enforcement of competition law by sector regulators in the UK<sup>1</sup>

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The relationship between competition law and sector regulation is a difficult and important one.<sup>2</sup> At a practical level, the traditional utility industries, such as energy, water and telecommunications are important in their own right as well as being critical to other sectors of the economy and providing essential services to consumers. They have been transformed in the UK since the 1980s from monopolistic state-owned companies into privately owned competitive industries overseen by independent regulatory agencies. This transformation brings with it the question of ensuring the consistent and coherent application of competition law and regulation by the public authorities.

The issue is not peculiar to the UK and is one which is relevant to all EU member states, particularly in relation to the liberalisation of network industries. At EU level, there is a competition authority, the European Commission, which applies EU competition law and national regulators which apply national regulatory policy. EU competition law applies to all regulatory sectors and, if there is a clash between national regulatory decisions and EU competition law, then the latter prevails.<sup>3</sup> This arrangement is also common in Member States, e.g., France and Germany, where competition law is a matter for the competition authority and regulatory issues remain with a sector regulator. There are, however, national systems with a joint competition and regulatory authority (Spain) or where the competition authority also has regulatory responsibilities for a sector or sectors (the Netherlands).

The UK's unique answer since the Competition Act 1998 has been to give the sector regulators the power to enforce competition law, alongside their regulatory powers and duties, while at the same time maintaining the competition authority's powers in relation to these sectors, in other words, a system of concurrent powers.<sup>4</sup> These arrangements have not, however, been perceived to have functioned very well, largely because the sector

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<sup>2</sup> . N Dunne *Competition Law and Economic Regulation* (2015) is the most extensive discussion.

<sup>3</sup> . See Case C-280/08 P *Deutsche Telekom AG v Commission* [2010] ECR I-9555, Case C-295/12 P *Telefónica and Telefónica de España v Commission* [2014] 5 CMLR 18.

<sup>4</sup> . On the uniqueness point see N Dunne 'Recasting Competition Concurrency under the Enterprise and Regulatory Reform Act 2013' (2014) 77 *Modern Law Review* 254 at 271, J Stern 'The Use of Competition Powers by Sector Regulators – the Origins, Experience and Potential Future of the UK's Concurrency Arrangements' City of London University, CCRP Working Paper No 27 (2014) available at: [http://www.city.ac.uk/\\_data/assets/pdf\\_file/0004/242590/CCRP-Jon-Stern-concurrency-arrangements-27.pdf](http://www.city.ac.uk/_data/assets/pdf_file/0004/242590/CCRP-Jon-Stern-concurrency-arrangements-27.pdf)

regulators have used their competition law powers infrequently.<sup>5</sup> This was seen by government as part of a wider problem of competition law enforcement and major reforms were made to the institutions of competition law enforcement in the UK as well as the system of concurrent powers in the Enterprise and Regulatory Reform Act 2013.

These reforms, which came into force on the 1<sup>st</sup> April 2014, are not a major break with the previous system but are an effort to make it work more effectively and to deepen and further its reach by extending this approach to two new sectors: financial and health services. These industries are very different. The financial services industry, although regulated, has always been privately owned and competitive and has a much wider number of companies than, e.g., the energy sector. Health service providers in the UK are largely state-owned not for profit institutions, operating in a highly regulated and politicised environment within which the question of whether competitive forces should be introduced at all is very controversial.<sup>6</sup> From a competition law perspective it is doubtful that all health service activities actually fall within its remit.<sup>7</sup> The challenge, therefore, is not simply to make the previous system work more effectively but to extend it to new, very different, markets.

### *The Enterprise and Regulatory Reform Act 2013*

The issue of concurrency was included in a broad reform of UK competition law which was intended to improve the enforcement of competition law both in terms of seeing more activity and in shortening the time frames for enforcement proceedings.<sup>8</sup> The Act made four main changes in relation to concurrency.<sup>9</sup> First, it extended the reach of concurrent competition powers to include the Financial Conduct Authority, the Payment Systems Regulator and Monitor, the health services regulator. Secondly, it imposed a duty on the regulators to consider, before making a regulatory enforcement order or imposing a monetary penalty, whether or not it would be more appropriate to proceed under the

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<sup>5</sup> . See BIS 'A Competition Regime for Growth: Consultation on Options for Reform' (2011) paras 7.6 – 7.12, National Audit Office 'Review of the UK's Competition Landscape' (2010) at 14, House of Lords Select Committee on Regulators 'UK Economic Regulators' HL 189-I (2007) at 67, J McInnes 'Concurrent Exercise of Competition Powers by the Sectoral Regulators: Is it time for a more radical change of approach?' [2012] *Competition Law Journal* 37.

<sup>6</sup> . See A Davies 'This Time, it's for Real: The Health and Social Care Act 2012' (2013) 76 *Modern Law Review* 564, L Stirton 'Back to the Future? Lessons on the Pro-Competitive Regulation of Health Services' (2014) 22 *Medical Law Review* 180. See also the National Health Service (Amended Duties and Powers) Bill HC Bill 18 2014-15 and the Second Reading debate at: 21 Nov. 2014 col 539-598

<sup>7</sup> . See Case C-205/03 *FENIN v Commission* [2003] ECR I-6295, European Commission 'Communication on the application of the European Union State aid rules to compensation granted for the provision of services of general economic interest' OJ C 8, 11.1.2012, 4-14, at section 2.1.4, Competition and Markets Authority 'Public Bodies and Competition Law' (2011) OFT 1389, O Odudu 'Are State-owned Health-care Providers Undertakings Subject to Competition Law?' (2011) 32 *European Competition Law Review* 231, D Sinclair '"Undertakings" in Competition Law at the Public-private Interface – an unhealthy situation' (2014) 35 *European Competition Law Review* 167.

<sup>8</sup> . For background see: C Graham "The Reform of UK Competition Policy" (2012) 8 *European Competition Journal* 539.

<sup>9</sup> . For discussion see N Dunne, above, note 3.

Competition Act 1998.<sup>10</sup> Thirdly, the Act made provision that the national competition authority, the Competition and Markets Authority (CMA), may decide in a particular case to direct a regulator to transfer a case to it if it feels that this would further the promotion of competition in any market in the UK to the benefit of consumers.<sup>11</sup> Fourthly, s. 52 of the Act allows the Secretary of State to make an order which will remove concurrent competition powers from a regulator if the Secretary of State thinks that this is appropriate for the purposes of promoting competition.

One of the consequential changes has been a greater level of formality in the relationships between the CMA and the regulators. The most public face of this has been the creation of the UK Competition Network (UKCN)<sup>12</sup> which has published a statement of intent about its future working focusing on strategic dialogue, enforcement cooperation, enhancing capabilities and sharing best practice.<sup>13</sup> Its mission is stated to be:

“to promote competition for the benefit of consumers and to prevent anti-competitive behaviour both through facilitating use of competition powers and development of pro-competitive regulatory frameworks, as appropriate.”

This statement needs to be read in the context of the CMA having a goal to extend the frontiers of competition law into new areas, which includes working with the regulators to ensure fuller use of their competition law powers in the relevant markets.<sup>14</sup>

Underlying this are other significant organisational changes, which include the agreement of Memoranda of Understanding between the CMA and the regulators. The CMA has created a Sector Regulation Unit with responsibility for coordinating the concurrency network and promoting competition more generally.<sup>15</sup> Each regulator has agreed to set up an equivalent arrangement, referred to in the individual Memoranda of Understanding as a “relationship manager”. There are regular meetings between the CMA and the regulators at various levels, from Chair, chief executive to officials at working level.<sup>16</sup> The CMA is also required to make an annual report on the working of the concurrency arrangements and it provided a “Baseline” report in 2014, before publishing the first annual report in 2015.<sup>17</sup>

The legal framework for the concurrent exercise of competition law powers regarding anti-competitive agreements and the abuse of a dominant position is set out in the Concurrency Regulations supplemented by the CMA’s guidance on the use of its powers and the

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<sup>10</sup> . This has been done through amending the applicable legislation for the regulators.

<sup>11</sup> . See Competition Act 1998 (Concurrency) Regulations 2014 SI 536, para 8.

<sup>12</sup> . <https://www.gov.uk/government/groups/uk-competition-network> (accessed 06/11/15)

<sup>13</sup> . <https://www.gov.uk/government/news/network-launched-to-help-drive-competition-in-regulated-sectors>

<sup>14</sup> . See: <https://www.gov.uk/government/speeches/cma-mission-and-strategy> quoted in CMA ‘Regulated Industries: Guidance on the concurrent application of competition law to regulated industries’ (2014) at 10.

<sup>15</sup> . CMA ‘Annual Concurrency Report 2015’ (2015) at para 11.

<sup>16</sup> . Ibid.

<sup>17</sup> . Enterprise and Regulatory Reform Act Sched 4, para 16. CMA “‘Baseline’ Annual Report on Concurrency” (2014).

Memoranda of Understanding.<sup>18</sup> The regulations provide the regulators and the CMA with a power to send each other information regarding potential cases and the CMA expects to be given details of complaints and own initiative investigations.<sup>19</sup> These regulations create a duty on the regulators and the CMA before they launch an investigation or take certain decisions to inform the other agencies who they think have or may have a concurrent jurisdiction.<sup>20</sup> Where such a notification is made, all the agencies who have jurisdiction must agree on which agency is to exercise it.<sup>21</sup> The CMA expects agreement to be reached promptly and, in any event, within two months after an authority has received a complaint.<sup>22</sup> If they are unable to agree within a reasonable time (which the CMA says may differ from the two month period<sup>23</sup>) then it becomes a matter for the CMA to determine.<sup>24</sup> Once the CMA has decided that it must make a determination, this has to be done within ten working days and there are procedural requirements it must follow. There is a substantive limitation for health care cases because the CMA may not remove such cases from Monitor unless it is satisfied that the case is not principally concerned with health care issues for the purposes of the NHS in England.<sup>25</sup>

The principle behind the allocation of cases is that the case will be allocated to the regulator or the CMA depending on which one is best placed to deal with it. The relevant factors which will be considered include:

- whether the case affects more than one regulated sector and/or non-regulated sectors not subject to concurrent competition law
- previous contacts between the parties or complainants and a regulator or the CMA
- experience in dealing with any of the undertakings which may be involved in the proceedings
- experience in dealing with any similar issues which may be involved in the proceedings
- whether the CMA considers it necessary to exercise its competition law functions in relation to a case in order to develop United Kingdom competition policy or to provide greater deterrent and precedent effect for the benefit of competition and consumers, either within the relevant regulated sector, or more widely

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<sup>18</sup> . The Competition Act 1998 (Concurrency) Regulations 2014 SI 2014/536, CMA 'Regulated Industries: Guidance on the concurrent application of competition law to regulated industries' (2014). The memoranda are available at: <https://www.gov.uk/government/collections/uk-competition-network-ukcn-documents>

<sup>19</sup> . Ibid, paragraph 3 and CMA 'Regulated Industries: Guidance on the concurrent application of competition law to regulated industries' (2014) at para 3.21 and 3.25.

<sup>20</sup> . Concurrency Regulations, paragraph 4(1).

<sup>21</sup> . Ibid, paragraph 4(2).

<sup>22</sup> . CMA 'Regulated Industries: Guidance on the concurrent application of competition law to regulated industries' (2014) at para 3.24.

<sup>23</sup> . Ibid.

<sup>24</sup> . Concurrency Regulations, paragraph 5.

<sup>25</sup> . Ibid, paragraph 5(5).

- whether the case being allocated to the CMA and supported by the relevant Regulator (or vice versa) will provide the best combination of competition and sector-specific expertise.<sup>26</sup>

In practical terms, issues of allocation have gone smoothly in the first year of operation. Of the six cases identified agreement was reached in all of them and five were allocated to the sector regulators while one, in relation to anti-competitive agreements in health services, was allocated to the CMA.<sup>27</sup>

After agreement has been reached or the CMA has made a determination as to which agency is to be allocated the case, none of the other agencies may act in that matter.<sup>28</sup> It is, however, possible for a case to be transferred from one agency to another. This can be done either by agreement<sup>29</sup> or by a determination of the CMA that the case should be transferred to the CMA.<sup>30</sup> The CMA may do this where it is satisfied that its exercising these competition law functions rather than the regulator would further the promotion of competition within UK markets to the benefit of the consumer, subject to the reservation, in relation to Monitor, that the case is not principally concerned with matters relating to the provision of health services for the NHS in England.<sup>31</sup> This power cannot be exercised where the regulator has issued a statement of objections and is proposing to make an infringement decision.<sup>32</sup> The CMA has suggested that this power might be exercised where the CMA feels that it is best placed to make a decision which sets an appropriate precedent, in particular when similar issues arise across different sectors or part of the United Kingdom. It may also wish to do this in order to enforce the Competition Act more effectively when, for example, a regulator lacks the necessary resources.<sup>33</sup> The transfer is not irreversible, but the CMA expects that such a change of mind would only happen in exceptional circumstances.<sup>34</sup>

Once a case has been allocated to an agency this does not mean that all contact between the CMA and a regulator ceases. The regulations require the agencies to put in place arrangements for the sharing of certain information, namely information that an infringement may have taken place (even if the agency does not intend to take further action), drafts of various notices that the agency may have been preparing to issue and such other information in the possession of the agency as the other agency may reasonably

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<sup>26</sup> . CMA 'Regulated Industries: Guidance on the concurrent application of competition law to regulated industries' (2014) at para 3.22.

<sup>27</sup> . CMA 'Annual Concurrency Report 2015' (2015) at paras 11 and 20.

<sup>28</sup> . Concurrency Regulations, paragraph 6.

<sup>29</sup> . Ibid, paragraph 7.

<sup>30</sup> . Ibid, paragraph 8.

<sup>31</sup> . Ibid, paragraph 8(1).

<sup>32</sup> . Ibid, paragraph 8(6).

<sup>33</sup> . CMA 'Regulated Industries: Guidance on the concurrent application of competition law to regulated industries' (2014) at para 3.26.

<sup>34</sup> . Ibid, para 3.29.

require to facilitate the performance of its functions under the Competition Act 1998.<sup>35</sup> The CMA has said that information sharing between it and the regulators has gone beyond the obligations in the Regulations and has extended to more informal, and practical discussions and exchanges of views.<sup>36</sup> The CMA is maintaining a classified database of competition cases in the regulated sectors which will be accessible by officials of the regulators, to the extent permitted by law. The existence of this database is revealed in the memoranda of understanding<sup>37</sup> but no further details are given. Details of current concurrency cases since 1<sup>st</sup> April 2014 are published on the UKCN's website.

In addition to sharing information, the Regulations also provide for the secondment of staff between the CMA and the regulators and the CMA has said that this may be done to provide case support, investigatory expertise or specialist guidance.<sup>38</sup> Secondment of staff has been done in the first year of operation and this has included, in the case of an on-site inspection by a sector regulator, active advice and involvement by CMA officials with the relevant experience.<sup>39</sup>

The Concurrency Regulations only apply to cases of anti-competitive agreements and the abuse of a dominant position and not the concurrent powers of the CMA and the regulators to make a market investigation reference under the Enterprise Act 2002. How these powers are coordinated is spelt out in the Memoranda of Understanding. For those regulators who have always had concurrent powers, that is, outside the financial and health services sectors, there is a common pattern. Although the CMA and the regulators have concurrent powers and a duty to consult with each other before exercising those powers, there is no formal provision for resolving disagreements over who is to exercise those powers. As regards the sharing of information and staff the concurrency model is adopted with, however, the important exception that the specific information laid out in paragraph 9 of the Concurrency Regulations is not included. What this means is that the authority must provide all other information that is relevant or helpful to the other in its conduct of the case and, if an authority is exercising its powers, reports to the other in sufficient frequency and detail to ensure that it is sufficiently informed of the progress of the case. Information specified in paragraph 9 is information that is only relevant to breaches of the prohibitions on anti-competitive agreements and abuse of dominant position and action taken, or proposed to be taken, in relation to such breaches. The effect of this provision is to seemingly draw a bright line between market investigations and information obtained in relation to suspected breaches of the prohibitions.

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<sup>35</sup> . Concurrency Regulations, paragraph 9. Details are outlined in CMA 'Regulated Industries: Guidance on the concurrent application of competition law to regulated industries' (2014) at paras 3.42 - 3.54.

<sup>36</sup> . CMA 'Annual Concurrency Report 2015' (2015) at para 11.

<sup>37</sup> . See, e.g., CMA 'CMA and Ofgem Memorandum of Understanding' (2014) para 45.

<sup>38</sup> . Concurrency Regulations, paragraph 10, CMA 'Regulated Industries: Guidance on the concurrent application of competition law to regulated industries' (2014) at para 3.34.

<sup>39</sup> . CMA 'Annual Concurrency Report 2015' (2015) para 11.

### *Concurrency and health services*

One of the other major changes brought about by the 2013 Act was the extension of competition law powers to the health service regulator, Monitor. Its position is different from the other sector regulators. First, unlike the other regulators, it does not have a duty to promote competition, simply to exercise its functions with a view to preventing anti-competitive behaviour in the provision of health care services for the purposes of the NHS which is against the interests of people who use such services.<sup>40</sup> Because of this limited statutory remit; Monitor is an observer at the UKCN, not a full member. This means that Monitor's own guidance is not on the UKCN website.<sup>41</sup>

The second major difference with the other regulators is that a number of the bodies that Monitor is regulating will fall outside competition law because they will not be considered as "undertakings" and therefore within competition law. Alternatively, some but not all of the activities of a health service body may fall within the definition of an undertaking.<sup>42</sup> In order to ensure that the competition rules are applied equally across the NHS, a standard licence condition has been imposed on all providers of NHS funded services known as the "Competition oversight" condition.<sup>43</sup> The condition provides that:

"The Licensee shall not:

- (a) enter into or maintain any agreement or other arrangement which has the object or which has (or would be likely to have) the effect of preventing, restricting or distorting competition in the provision of health care services for the purposes of the NHS, or
- (b) engage in any other conduct which has (or would be likely to have) the effect of preventing, restricting or distorting competition in the provision of health care services for the purposes of the NHS,

to the extent that it is against the interests of people who use health care services."

This licence condition is aimed at anti-competitive agreements and conduct under Articles 101 and 102 TFEU but there are a number of important differences. First, the prohibition on abusive conduct is not restricted to situations where the licence holder is in a dominant position. Secondly, there is a general exception for anti-competitive behaviour if it is in the interests of people who use health care services. Although this is functionally equivalent to the exemption provision of Article 101(3) TFEU, Monitor seems to take a more liberal

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<sup>40</sup> . Health and Social Care Act 201 s. 62(3).

<sup>41</sup> . It is here: <https://www.gov.uk/government/publications/nhs-healthcare-providers-working-with-choice-and-competition> (accessed 06/11/15)

<sup>42</sup> . See European Commission 'Communication from the Commission on the application of the European Union State aid rules to compensation granted for the provision of services of general economic interest' Official Journal C8/4, 11.01.2012 at paras 21-25.

<sup>43</sup> . Standard Licence Condition C2.

assessment approach than the European Commission.<sup>44</sup> Even if this point is not accepted, Monitor makes the point that it could not look at interests of patients in relation to a conduct case under Article 102 TFEU whereas it can do so under the licence conditions.<sup>45</sup> Although Monitor did not take any enforcement action either under the competition law prohibitions or the licence conditions in the first year of this regime, the differences raise the possibility of two different competition regimes being applied.<sup>46</sup>

### *Early Experience of the New Concurrency Regime*

The CMA has noted that in the first year of the new arrangements, six new Competition Act investigations were launched by the regulators, as against an average of 2.9 investigations in the years 2005-2013 as well as there being five other continuing cases (see Table 1 for details). This included the first ever case started by the Civil Aviation Authority and a health services case which was decided by the CMA, rather than Monitor. There were four cases where the issues arose under Chapter 1/Article 101(1) TFEU unlike past experience which focused almost entirely on Chapter 2/Article 2 TFEU cases. The CMA adds a cautionary note, saying it remains to be seen whether or not this increase in enforcement activity will be maintained in coming years.<sup>47</sup> It is interesting to note that the prohibition case-load is roughly equivalent to that of the CMA.<sup>48</sup>

In addition, two major market investigations were started on energy markets and retail banking which have concluded provisionally that there are features of the market which lead to an adverse effect on competition.<sup>49</sup> It may be the case that this level of activity represents a high water mark of such references because it is difficult to see where, outside financial services and communications, further references might come from. The NHS is still dealing with the implementation of the Health and Social Care Act 2012, the water industry in England and Wales is implementing new arrangements for competition in the non-domestic sector and the Payment Systems Regulator has only just started operating although it has begun market reviews into indirect access to payment systems and the ownership and competitiveness of infrastructure provision, both of which will report in

<sup>44</sup> . Contrast Monitor 'Choice and competition licence conditions: guidance for providers of NHS funded services' at 29-31 with European Commission 'Guidelines on the application of Article 101(3) TFEU' paras 38-116.

<sup>45</sup> . See Monitor 'Choice and competition: hypothetical scenarios for NHS healthcare providers' (2014) at 6.3. Available at: <https://www.gov.uk/government/publications/hypothetical-scenarios-choice-and-competition-conditions-of-the-nhs-provider-licence-and-competition-law/choice-and-competition-hypothetical-scenarios-for-nhs-healthcare-providers> (accessed 01/12/15).

<sup>46</sup> . A similar argument in a different context is A Sanchez Graells 'New rules for health care procurement in the UK: a critical assessment from the perspective of EU economic law' [2015] *Public Procurement Law Review* 16.

<sup>47</sup> . CMA 'Annual Concurrency Report 2015' (2015) para 19.

<sup>48</sup> . Calculated via the CMA website 06/11/15 'CA 98 and civil cartels', 'Open cases' [https://www.gov.uk/cma-cases?keywords=&case\\_type\[\]=ca98-and-civil-cartels&case\\_state\[\]=open&opened\\_date\[from\]=&opened\\_date\[to\]=](https://www.gov.uk/cma-cases?keywords=&case_type[]=ca98-and-civil-cartels&case_state[]=open&opened_date[from]=&opened_date[to]=)

<sup>49</sup> . See <https://www.gov.uk/cma-cases/energy-market-investigation> and <https://www.gov.uk/cma-cases/review-of-banking-for-small-and-medium-sized-businesses-smes-in-the-uk> (accessed 06/11/15).



2016.<sup>50</sup> In all these cases it is simply too early to expect a market study which might lead to a reference. The arrangements for railways represent a political choice (although the Office of Rail and Road is conducting a review of ticketing arrangements)<sup>51</sup> and there are no obvious issues bubbling under in relation to civil aviation and postal services. In communications, Ofcom is conducting a review of the digital communications market<sup>52</sup> and it is possible that, if the issue of structurally separating Openreach from BT is pursued, this could lead to a market investigation. This leaves the possibility of a reference or references from the FCA which did not obtain its concurrent competition law powers until 1<sup>st</sup> April 2015, so it is too early to expect much activity in relation to enforcement but it is noticeable that it has carried out a seven market studies using its powers under the Financial Services and Markets Act.<sup>53</sup> It would be unprecedented for a regulator to make more than one market investigation reference in a year.

The FCA has also introduced a new provision in its supervision manual which will oblige regulated firms to notify the FCA if they have or may have committed a significant infringement of any applicable competition law.<sup>54</sup> The notification requirement becomes active as soon as a firm becomes aware, or has information which reasonably suggests, that a significant infringement has or may have occurred. Significance is to be judged by any actual or potential effect on competition, any customer detriment, the duration of any infringement and implications for the firm's systems and controls. This obligation is independent of any enforcement action by a competition authority. This was a controversial proposal with a number of respondents arguing that the new rule breached the principle against self-incrimination, which the FCA did not accept.<sup>55</sup> It will be interesting to see what level of enforcement activity, either by the FCA or firms self-policing is generated by this obligation.

## *Conclusions*

Although it is still early days, the new, more formal arrangements, between the CMA and the sector regulators seem to have led to greater contacts, more information flows, greater understanding and perhaps more trust between the agencies. It is also evident that there has been more enforcement activity in the first year of the new arrangements. It is too early to say whether or not this is a new trend or just a reaction to the political salience of the issue and the aftermath of the reform efforts. It does seem likely that most cases will be

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<sup>50</sup> . See <https://www.psr.org.uk/psr-focus/market-reviews> (accessed 06/11/15)

<sup>51</sup> . See <http://orr.gov.uk/consultations/policy-consultations/open-consultations/retail-market-review> (accessed 06/11/15).

<sup>52</sup> . Ofcom 'Strategic Review of Digital Communications' (2015).

<sup>53</sup> . See <http://www.fca.org.uk/news/list?ttypes=Market+study&> (accessed 06/11/15). Not all the market studies are being carried out under Enterprise Act powers.

<sup>54</sup> . FCA Supervision Manual, Rule 15.3.2. Effective 1 August 2015.

<sup>55</sup> . For the discussion see FCA 'FCA Competition Concurrency Guidance and Handbook amendments: Feedback on CP15/01, finalised guidance and rules' (2015) at paras 4.13-4.14 available at: <https://www.fca.org.uk/news/ps15-18-fca-competition-concurrency-guidance-handbook-amendments> (accessed 06/11/15)

resolved by commitment rather than infringement decisions which limit their jurisprudential value. The real challenge for the new arrangements will be to see how well they work in relation to the National Health Service and financial services. If the reforms of 2013 do make this system of concurrent powers work more effectively then this will provide another model for coordinating the enforcement of competition and regulatory law which might be of interest to other countries.