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**INTERACTIONS BETWEEN COMPETITION AUTHORITIES AND SECTOR REGULATORS –  
Contribution from Business at OECD (BIAC)**

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This contribution is submitted by Business at OECD (BIAC) under Session III of the Global Forum on Competition to be held on 1-2 December 2022.

More documentation related to this discussion can be found at: [oe.cd/icar](https://oe.cd/icar).

Please contact Ms. Lynn Robertson [E-mail: [Lynn.Robertson@oecd.org](mailto:Lynn.Robertson@oecd.org)], if you have any questions regarding this document.

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## *Interactions between Competition Authorities and Sector Regulators*

### **- Contribution from Business at OECD (BIAC) –**

#### **1. Introduction**

1. *Business at OECD* (BIAC) appreciates the opportunity to submit comments to the Roundtable on Interactions between competition authorities and sector regulators at the 21st Global Forum on Competition.
2. BIAC previously submitted comments to the OECD for a roundtable discussion on independent sector regulators and competition in 2019.<sup>1</sup> In that submission, we considered the different roles of sector regulators and competition authorities in advancing similar goals, explained some of the advantages and disadvantages of having separate independent sector regulators and competition authorities and provided an analysis of the concurrency regime in the UK under which sector regulators also have competition powers. In the submission, we observed that competitive markets require efficient and effective allocation of enforcement responsibility between competition authorities and sector regulators. That observation remains true today.
3. The intention of the present submission is to provide further views on the institutional context, legislation and cooperation agreements that facilitate, shape, and influence the nature of interactions between competition authorities and independent sector regulators in a number of jurisdictions.

#### **2. Types of Sector Regulators**

4. Around the world, countries have different types of sector regulators operating with a variety of powers. Sector regulators for utilities are common, responsible for the regulation of a country's electricity, gas, water, broadcasting or postal infrastructure, network, and participants. Other network industries and sectors such as media, transport, banking, or other financial services also often have their own independent sector regulators.
5. In some cases, these regulators only have regulatory powers, but in others they also have competition law powers covering their sector of expertise (this is known as “concurrency” in the UK). In the U.S., some sector regulators have shared jurisdiction with the U.S. antitrust agencies, or in some cases sole jurisdiction, in respect of merger reviews. There is a range of different institutional frameworks for the roles and powers of sector regulators across different countries.

#### **3. Definition of Objectives for Sector Regulators and Competition Authorities**

6. It is important that the objectives, roles, and powers of an independent sector regulator are clearly defined. Competition authorities have a broader mandate of promoting competition in all sectors of the economy while a sector regulator will often have other additional statutory objectives in specific sectors, such as universal service obligations in network industries and financial stability

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<sup>1</sup> OECD, Independent Sector Regulators—Note by BIAC, DAF/COMP/WP2/WD(2019)34 (Nov. 22, 2019) [https://one.oecd.org/document/DAF/COMP/WP2/WD\(2019\)34/en/pdf](https://one.oecd.org/document/DAF/COMP/WP2/WD(2019)34/en/pdf)

in banking. These additional objectives may create tension with competition law, leading to friction between the sector regulator and the competition authority. Having clarity on how the sector regulator will achieve its objectives and how these relate to the objectives of the competition authority can help to ensure smoother cooperation between the two bodies.

7. The objectives of a sector regulator may be laid out in legislation. In the UK, although the concurrency regime which empowers sector regulators to apply competition law alongside the UK's competition authority has been in place since the Competition Act 1998.<sup>2</sup> The Enterprise Regulatory Reform Act (ERRA) of 2013 provided increased clarity on the objectives and way in which the sector regulators should apply competition law.<sup>3</sup> The ERRA created a new single competition authority in the UK, the Competition and Markets Authority (CMA), and clarified its objectives. The ERRA gave the CMA enhanced leadership, with the power to decide which regulator will act in a case in a concurrent sector, following consultation; and the possibility of taking over a case from a concurrent regulator in certain circumstances. Overall, the legislation sought to ensure greater consistency in approach for competition cases, business, and the economy through the use of general competition law by both the CMA and the sector regulators; an aim which has largely been a success.

8. Aside from legislation, many competition authorities will have Memoranda of Understanding (MoU) or Memoranda of Agreements (MoAs) in place with relevant sector regulators, which will often include definitions of their respective objectives and roles. Whilst these do not have legal effect, such memoranda are intended to establish an understanding between the competition authority and the sector regulator as to how they will work in practice. In Australia, an MoU between the competition authority, the Australian Competition and Consumer Commission (ACCC), the Australian Energy Market Commission (AEMC) and the Australian Energy Regulator (AER) describes the roles of each of the three agencies with reference to the legislation through which they operate, and sets out that the three agencies will “work together to achieve the effective regulation, oversight and development of energy markets in Australia, recognising that each agency has different roles and functions with respect to these markets.”<sup>4</sup> The Korean Fair Trade Commission (KFTC) has also signed MoUs with the Korea Communications Commission (KCC) and the Financial Services Commission (FSC).<sup>5</sup> The Federal Antimonopoly Service (FAS) of Russia has agreements in place with the Russian Central Bank in relation to regulation of financial markets.<sup>6</sup>

9. Similarly, the UK's CMA has MoUs in place with the sector regulators that provide guidelines for their cooperation and draw on the formal framework set out in legislation. For example, the CMA's MoU with the UK's communications regulator, Ofcom, sets out the statutory responsibilities of both the CMA and Ofcom. The MoU explains Ofcom's principal duty to further the interest of citizens in relation to communication, and its core objectives, such as securing that universal postal service is provided in the UK and that sufficient plurality in providers of television and radio services is maintained. The MoU also makes clear that Ofcom's duties do not apply when Ofcom is carrying out its concurrent competition law functions. The clarification of how Ofcom's

<sup>2</sup> Competition Act 1998, <https://www.legislation.gov.uk/ukpga/1998/41/contents>.

<sup>3</sup> Enterprise and Regulatory Reform Act 2013, <https://www.legislation.gov.uk/ukpga/2013/24/contents/enacted>.

<sup>4</sup> Memorandum of Understanding Between Australian Energy Market Commission and Australian Energy Regulator and Australian Competition and Consumer Commission (June 23, 2014), <https://www.accc.gov.au/system/files/Memorandum%20of%20Understanding%20between%20AER%2C%20ACCC%20and%20AEMC.pdf>.

<sup>5</sup> OECD, Independent Sector Regulators—Note by Korea, DAF/COMP/WP2/WD(2019)17 (Nov. 13, 2019), [https://one.oecd.org/document/DAF/COMP/WP2/WD\(2019\)17/en/pdf](https://one.oecd.org/document/DAF/COMP/WP2/WD(2019)17/en/pdf).

<sup>6</sup> OECD, Independent Sector Regulators—Note by Russian Federation, DAF/COMP/WP2/WD(2019)21, (Nov. 13, 2019), [https://one.oecd.org/document/DAF/COMP/WP2/WD\(2019\)21/en/pdf](https://one.oecd.org/document/DAF/COMP/WP2/WD(2019)21/en/pdf).

concurrent competition powers with the CMA apply in practice is helpful. In general, the fact that an MoU can include the objectives of the competition authority and the sector regulator in one place and is signed by both, can help to establish a good faith relationship between the two and can be useful in providing certainty and transparency, provided that they do not undermine or alter the delegation of responsibilities as embodied in the relevant authorizing statutes.

10. An overlap in personnel between sector regulators and competition authorities can also be helpful in providing expertise in specific areas. In Japan, the competition authority the Japanese Fair Trade Commission (JFTC) second staff to the electricity regulator, the Electricity Markets Surveillance Commission.<sup>7</sup> In Australia, the ACCC has a cross-over Commissioner/Board Member with the Australian Energy Regulator (AER) which includes, and a cross-appointment process for the Australian Communications and Media Authority (ACMA). In the UK, the Concurrency Regulations allow for staff to be shared between the CMA and sectoral regulators, or between sectoral regulators.<sup>8</sup>

11. A lack of clarity of respective objectives of the competition authority and a sector regulator can lead to issues like conflicting outcomes and increased costs through duplication. In the U.S., mergers in the electricity sphere often are subject to non-exclusive review by the Federal Energy Regulatory Commission (FERC), the antitrust agencies and the states. Differences in competitive effects analysis by the FERC's and the antitrust agencies has led to both reaching different conclusions on whether an electricity merger harms competition.<sup>9</sup> In South Africa, both the Independent Communications Authority of South Africa (ICASA) and the Competition Commission respectively announced in July and August 2017 that they would be conducting inquiries into data prices in South Africa.<sup>10</sup>

12. Conversely, having clear, separate objectives that are well-defined can lead to pragmatic and optimal outcomes for competition. The Payment Systems Regulator (PSR) in the UK was created through legislation in 2013 and became fully operational in 2015. The PSR was set up with a clear set of objectives to promote competition and innovation and ensure payment systems are operated and developed in the interests of those who use them, and given regulatory powers in relation to payment systems designated by the UK Treasury, and concurrent competition powers applicable more broadly to any payment system active in the UK.<sup>11</sup> The creation of the PSR in this way has generally led to pragmatic approaches in the application, development and enforcement of payment systems regulation and competition law in the payments sector in the UK.

<sup>7</sup> OECD, Independent Sector Regulators—Note by Japan, DAF/COMP/WP2/WD(2019)16 (Nov. 13, 2019), [https://one.oecd.org/document/DAF/COMP/WP2/WD\(2019\)16/en/pdf](https://one.oecd.org/document/DAF/COMP/WP2/WD(2019)16/en/pdf).

<sup>8</sup> The Competition Act 1998 (Concurrency) Regulations 2014, <https://www.legislation.gov.uk/ukxi/2014/536/contents>.

<sup>9</sup> For example, in 2004, the DOJ and the FERC separately reviewed the proposed merger of Exelon Corporation and Public Service Enterprise Group, Inc. *See* Proposed Final Judgment, U.S. v. Exelon Corp. and Public Service Enterprise Group, Inc. (June 22, 2006), <http://www.usdoj.gov/atr/cases/f216700/216784.htm>; Order Authorizing Merger Under Section 203 of the Federal Power Act, 112 FERC 61,011 (July 1, 2005). Both agencies concluded that, as originally structured, it would likely substantially reduce competition in certain wholesale electricity markets. However, since the agencies approached the analysis of competitive effects in different ways, the remedy required by the FERC fell short of what the DOJ would have required. The transaction was ultimately abandoned by the parties.

<sup>10</sup> Webber Wentzel, Data costs must fall - Competition Commission joins ICASA in war (Sept. 28, 2017), <https://www.polity.org.za/article/data-costs-must-fall---competition-commission-joins-icasa-in-war-2017-09-28>.

<sup>11</sup> *How We Regulate*, PAYMENT SYSTEMS REGULATOR, <https://www.psr.org.uk/how-we-regulate/#:~:text=We%20have%20regulatory%20powers%20under,breach%20relevant%20regulations%20and%20directions>.

#### 4. Facilitation of Cooperation Between Competition Authorities and Sector Regulators

13. Cooperation may be explicitly provided for by legislation that envisages the competition authority and the sector regulator working together and clarifies their competences and methods of interaction. In the UK, the Concurrency Regulations that were introduced by the ERRA in 2013 (as explained above) provide a legislative framework for cooperation between the CMA and the sector regulators. The Regulations include provisions on information sharing, how the CMA and sector regulator should determine which authority is competent to act on competition matters, and a provision avoiding double jeopardy such that the sector regulator is prohibited from exercising its concurrent competition powers in a case if it has already been agreed that the same case shall be considered by the CMA.<sup>12</sup>

14. Such cooperation may also be provided for through the more general, fundamental competition legislation in a country. The South African Competition Act of 1998, which established the Competition Commission, expressly sets out that the latter is responsible for negotiating agreements with any sector regulator to coordinate and harmonise the exercise of jurisdiction over competition matters within the relevant industry or sector to ensure the consistent application of the competition principles. The legislation also empowers the Competition Commission to participate in the proceedings of any sector regulator and advise or receive advice from them.<sup>13</sup>

15. As mentioned in the previous section, many competition authorities have non-legally binding memoranda in place with relevant sector regulators. These facilitate their cooperation in practice, often including provisions on sharing information and principles for allocating investigations or conducting concurrent merger reviews. The South African Competition Commission's Memorandum of Agreement with the communications regulator ICASA, for example, explains that both regulators may request information or advice from the other, and that such consultations between the two shall be conducted with an acknowledgement of their respective areas of expertise. It also provides that, when determining the approval of a merger that requires both of their approval, they shall consult one another in relation to competition matters.<sup>14</sup> The MoU between the CMA and Ofcom in the UK provides a framework for determining which authority will exercise its concurrent competition powers in respect of any particular case, and principles for the sharing of information between the two, as well as the designation of a specific manager for each of the two authorities to manage their relationship.<sup>15</sup> Similarly, the MoU between the ACCC and ACMA in Australia provides for consultations between both agencies, regular meetings and forums between officers of each agency, and sets out guidelines for requests for information, documents or assistance and the referral of relevant complaints from one to the other.<sup>16</sup>

16. Cooperation between competition authorities and sector regulators may also be provided for through regulatory groups or forums. Engagement at such forums can be a practical tool to promote

<sup>12</sup> The Competition Act 1998 (Concurrency) Regulations 2014, <https://www.legislation.gov.uk/ukxi/2014/536/contents>.

<sup>13</sup> Competition Act, 1998 (Act No. 89, 1998), [https://www.gov.za/sites/default/files/gcis\\_document/201409/a89-98.pdf](https://www.gov.za/sites/default/files/gcis_document/201409/a89-98.pdf).

<sup>14</sup> ICASA and the Competition Commission—MOA (Aug. 29, 2019), <https://www.icasa.org.za/legislation-and-regulations/icasa-and-the-competition-commission-mou>

<sup>15</sup> Memorandum of Understanding Between the Competition and Markets Authority and the Office of Communications—Concurrent Competition Powers (Feb. 2, 2016), [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/909445/Ofcom-MoU.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/909445/Ofcom-MoU.pdf).

<sup>16</sup> Memorandum of Understanding Between The Australian Competition and Consumer Commission and The Australian Communications and Media Authority (Dec. 15 2016), <https://www.acma.gov.au/sites/default/files/2021-09/MOU%20-%20ACMA%20and%20ACCC%2015%20December%202016.pdf.pdf>.

the consistent application of competition law and facilitate discussion and information sharing where a country has multiple sector regulators across various industries. For example, in Australia the Council of Financial Regulators (CFR) was established in 1998 as the successor to the Council of Financial Supervisors, which had been in operation from 1992.<sup>17</sup> The CFR comprises four sector regulators, the Australian Prudential Regulation Authority (APRA), the Australian Securities and Investments Commission (ASIC), the Reserve Bank of Australia (RBA) and the Treasury. Although the ACCC is not itself a member, it collaborates closely with the CFR.<sup>18</sup> In relation to energy sector regulation, the ACCC and AER have also held a joint regulatory conference annually since 2006.<sup>19</sup> In a similar way, the UK Competition Network (UKCN), established in 2013, is an alliance of the CMA with the sector regulators in the UK, that is intended to strengthen the collaborative framework between them.<sup>20</sup> The UKCN seeks to engage in strategic dialogue, cooperate on competition law enforcement, share best practices and enhance the capabilities of each regulator.<sup>21</sup>

17. Where independent sector regulators are empowered to pursue their own investigations or regulatory measures, competition authorities may interact with the sector regulator to seek to influence them. In the U.S., in August 2022, the antitrust agencies (the FTC and DOJ) submitted a joint comment to FERC asking them not to pursue a proposed rulemaking on right of first refusal that would enable incumbent electricity transmission owners to block competitors from bidding to design, construct, and own certain new interstate transmission facilities, in a way that the antitrust agencies believed would be detrimental to competition.<sup>22</sup> In the UK, the CMA completed a market study into Digital Comparison Tools in 2017, in which its final report made recommendations to three sector regulators, Ofcom, the Office of Gas and Electricity Markets (Ofgem) and the Financial Conduct Authority (FCA), to consider certain regulatory changes.<sup>23</sup>

18. When legislation envisages the possibility of concurrent jurisdiction and non-exclusive review by the competition authority and the sector regulator, there is scope for conflicting approaches between the two. In the U.S., the Federal Energy Regulatory Commission (FERC), created in 1977, inherited many of the responsibilities of the previous energy sector regulator created by the Federal Power Act 1920. FERC's statutory responsibilities are set out in this latter piece of legislation, including the power to review electric power mergers and requirement to approve a merger if it is found to be in the public interest.<sup>24</sup> FERC's Merger Policy Statement issued in 1996 clarified that FERC will adopt the DOJ/FTC Merger Guidelines as the analytical framework for analysing the

<sup>17</sup> History, COUNCIL OF FINANCIAL REGULATORS, <https://www.cfr.gov.au/about/history.html>.

<sup>18</sup> Council of Financial Regulators, AUSTL. COMPETITION & CONS. COMM'N, <https://www.accc.gov.au/about-us/consultative-committees/council-of-financial-regulators>.

<sup>19</sup> ACCC/AER Regulatory Conference, AUSTL. COMPETITION & CONS. COMM'N, <https://www.accc.gov.au/about-us/conferences-events/accc-aer-regulatory-conference>.

<sup>20</sup> UK Competition Network, COMPETITION & MKTS. AUTH., <https://www.gov.uk/government/groups/uk-competition-network>

<sup>21</sup> United Kingdom Competition Network (UKCN) Statement of Intent, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/382445/UKCN\\_Statement\\_of\\_Intent.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/382445/UKCN_Statement_of_Intent.pdf).

<sup>22</sup> Press Release, Fed. Trade Comm'n, Federal Trade Commission, DOJ Urge FERC to Preserve Robust Wholesale Electricity Markets (Aug. 17, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/08/federal-trade-commission-doj-urge-ferc-preserve-robust-wholesale-electricity-markets>.

<sup>23</sup> COMPETITION & MKTS. AUTH., DIGITAL COMPARISON TOOLS MARKET STUDY FINAL REPORT (Sept. 26, 2017), <https://assets.publishing.service.gov.uk/media/59c93546e5274a77468120d6/digital-comparison-tools-market-study-final-report.pdf>.

<sup>24</sup> Lawrence R. Greenfield, An Overview of the Federal Energy Regulatory Commission and Federal Regulation of Public Utilities (June 2018), <https://www.ferc.gov/sites/default/files/2020-07/ferc101.pdf>.

effect of a merger on competition.<sup>25</sup> However, FERC did not revise its merger policy when the DOJ/FTC issued new guidelines in 2010. This now formalised divergence further highlights distinction in the way that FERC and the antitrust agencies review electricity mergers; albeit the capacity for differing outcomes was already evident prior to this (as explained above, the DOJ and FERC have reached different conclusions in merger cases in the past).<sup>26</sup> The differing approaches can lead to different conclusions regarding effects and remedies for those effects, which may unnecessarily increase costs for merging parties that face conflicting or inconsistent outcomes at both agencies.

19. In this context it is also worth looking at the potential conflicts arising out of diverging standards and burden of proof as well as the *ne bis in idem* principle in cases of parallel and/or consecutive regulatory and competition law decisions .

20. As a first example, we refer to the *Slovak Telekom (ST)* case.<sup>27</sup> Following an overall market analysis in March 2005, the NRA adopted a decision designating ST as an operator with significant market power (SMP) in the wholesale market for access to the unbundled local loop and imposed on ST the following various regulatory obligations including an access obligation based on a reference offer. Accordingly, in August 2005 ST published its first reference offer in line with the regulatory decision of the NRA which consecutively was amended and approved by the NRA several times. Nevertheless, in December 2009, the European Commission (EC) initiated proceedings against ST, alleging that it had abused a dominant position on the Slovak market for wholesale broadband services based on the prior SMP finding of the NRA. This related, in particular, to the refusal to grant unbundled access to the local loop and margin squeezes for various telecommunications services. The proceedings ended in 2014 with the imposition of a fine, which was reduced but ultimately upheld on appeal. It is particularly important to emphasize that each authority must separately review the factual prerequisite. The results of other authorities may not be used as a basis. This applies in particular because the respective laws apply different standards of consideration and have different standards of proof.

21. The case of the Belgian *bpost* is similar in this regard and fits into the case law on the “*ne bis in idem*” principle already examined in detail by the OECD.<sup>28</sup> The undertaking was initially fined by the Belgian NRA for the postal sector in July 2011. In addition, the competition authority imposed a second fine in the same case. It is problematic that a company was sanctioned twice for one infringement. The ECJ found that this is a violation of the “*ne bis in idem*” principle and, in order for the cooperation of the authorities to be lawful, the ECJ<sup>29</sup> requires that the authorities cooperate in a sufficiently coordinated manner and in close temporal connection. In addition, the totality of the sanctions imposed must be commensurate with the seriousness of the competition violations committed.

<sup>25</sup> Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement, Order No. 592 (Dec 18, 1996), [https://www.ferc.gov/sites/default/files/2020-04/rm96-6\\_0.pdf](https://www.ferc.gov/sites/default/files/2020-04/rm96-6_0.pdf).

<sup>26</sup> Mark J. Niefer, *Explaining the Divide Between DOJ and FERC on Electric Power Merger Policy*, 32 ENERGY L.J. 505 (2012), [https://www.eba-net.org/assets/1/6/18-505-Niefer\[Final11.9\].pdf](https://www.eba-net.org/assets/1/6/18-505-Niefer[Final11.9].pdf).

<sup>27</sup> Press Release, Eur. Comm's, Antitrust: Commission fines Slovak Telekom and its parent, Deutsche Telekom, for abusive conduct in Slovak broadband market (Oct. 15, 2014), [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_14\\_1140](https://ec.europa.eu/commission/presscorner/detail/en/IP_14_1140).

<sup>28</sup> OECD, Competition Enforcement and Regulatory Alternatives – Background Note, DAF/COMP/WP2/WD(2021)22 (May 7, 2021), [https://one.oecd.org/document/DAF/COMP/WP2\(2021\)2/en/pdf](https://one.oecd.org/document/DAF/COMP/WP2(2021)2/en/pdf).

<sup>29</sup> Case C.117/20, *bpost SA v Autorité belge de la concurrence* (Mar. 22, 2022), ECLI:EU:C:2022:202.

## 5. Legislative Changes and Looking to the Future

22. Whilst the likelihood of specific legislative changes in individual countries that might affect interactions between sector regulators and competition authorities is not possible to discuss here, one policy development that is likely to fuel changes to the nature of interactions between competition authorities across the globe is the growth of competition concerns in digital markets. Digital innovation is already changing the way in which sector regulators and competition authorities cooperate, largely because concerns with digital platforms stem from an intersection of competition, consumer protection, data, and privacy concerns, and because the nature of most digital platforms is such that they operate across and interoperate with a multitude of sectors.

1. In Australia, the competition authority, the ACCC, joined with the sector regulators the Australian Communications and Media Authority (ACMA), the Office of the Australian Information Commissioner (OAIC), and the Office of the eSafety Commissioner in March 2022 to work on digital platform regulation through the new Digital Platform Regulators Forum (DPRF).<sup>30</sup> The DPRF was formed in order to help streamline the approach to the regulation of digital platforms, and a joint statement by the members noted that a “critical and overarching focus is considering how competition, consumer protection, privacy, online safety and data intersect in issues that the various regulators consider.”<sup>31</sup>

2. In the UK, innovation in payments and banking has inspired increased sector regulator cooperation. Open Banking, which allows consumers and businesses to share their data with third parties and make payments directly from their account, has largely been developed in the UK by an independent entity overseen by the CMA, whose mandate will soon end. In March 2022, the FCA, PSR, Treasury and the CMA set up a new regulatory oversight committee to lead the work on designing the future Open Banking oversight entity.<sup>32</sup> There has also been formalised collaboration between Ofcom, the CMA and the Information Commissioner’s Office (ICO) since 2020, in the form of the Digital Regulation Cooperation Forum (DRCF). The DRCF aims to support regulatory coordination in online services, on the basis that “the unique challenges posed by the regulation of online platforms” require greater regulatory cooperation.<sup>33</sup> As a further step arising out of the DRCF, the CMA and Ofcom issued a joint statement on online safety and competition in digital markets in July 2022, which includes a section on how the CMA and Ofcom expect to work together.<sup>34</sup> These forms of targeted cooperation are likely to lead to more satisfactory outcomes that function on all levels.

<sup>30</sup> Press Release, Austl. Competition & Cons. Comm’n, Agencies form Digital Platform Regulators Forum (Mar. 11, 2022), <https://www.accc.gov.au/media-release/agencies-form-digital-platform-regulators-forum>.

<sup>31</sup> *Id.*

<sup>32</sup> Joint statement by HM Treasury, the CMA, the FCA and the PSR on the future of Open Banking (Mar. 25, 2022), <https://www.gov.uk/government/publications/joint-statement-by-hm-treasury-the-cma-the-fca-and-the-psr-on-the-future-of-open-banking/joint-statement-by-hm-treasury-the-cma-the-fca-and-the-psr-on-the-future-of-open-banking>.

<sup>33</sup> Competition & Mkts. Auth., Ofcom & ICO, Digital Regulation Cooperation Forum, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/896827/Digital\\_Regulation\\_Cooperation\\_Forum.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/896827/Digital_Regulation_Cooperation_Forum.pdf).

<sup>34</sup> *How the CMA and Ofcom expect to work together*, COMPETITION & MKTS. AUTH., <https://www.gov.uk/government/publications/cma-ofcom-joint-statement-on-online-safety-and-competition/online-safety-and-competition-in-digital-markets-a-joint-statement-between-the-cma-and-ofcom#how-the-cma-and-ofcom-expect-to-work-together>.



## 6. Conclusion

23. Interactions between competition authorities and sector regulators can be facilitated and governed in a variety of ways, including through specific regulations and general competition legislation, cooperation agreements, memoranda of understanding, and regulatory forums. When interactions between a country's competition authority and sector regulators are well-established and they have a good faith relationship facilitated through memoranda of understanding or agreements, this can produce constructive and efficient outcomes in cases.

24. It is also important that the objectives of sector regulators, and the way in which they will interact with the competition authority where needed, is clearly defined, particularly where the sector regulator and the competition authority have non-exclusive review in a case or concurrent competition law powers. The absence of such clarity or relationships can lead to duplication of processes or increased costs and confusion for parties involved in cases.

25. The nature of interactions between sector regulators and competition authorities is dynamic; in many countries it has evolved over time and will continue to do so. It can be expected that further legislative amendments, the creation of new sector regulators, further MoUs to facilitate cooperation, and regulatory forums will further change the ways in which a given sector regulator and competition authority interact. In digital markets, however, some jurisdictions have already begun to implement explicit cooperation mechanisms between regulators to address competition and regulatory concerns, and this is only likely to increase.