
20 November 2017

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

Working Party No. 2 on Competition and Regulation

**Co-operation between Competition Agencies and Regulators in the Financial Sector
- Note by the United Kingdom**

4 December 2017

This document reproduces a written contribution from the United Kingdom submitted for Item 3 of the 64th meeting of the Working Part No. 2 on Competition and Regulation on 4 December 2017.

More documents related to this discussion can be found at: www.oecd.org/daf/competition/cooperation-between-competition-agencies-and-regulators-in-the-financial-sector.htm.

Please contact Mr Chris PIKE if you have any questions about this document
[Email: Chris.Pike@oecd.org]

JT03423281

United Kingdom

This paper sets out the submission made by the Competition and Market Authority (CMA) on co-operation between the CMA, as the UK's primary competition authority, and each of the three regulators in the financial services sector: the Financial Conduct Authority (FCA), the Payments Systems Regulator (PSR) and the Prudential Regulation Authority (PRA). It broadly covers the questions set out in Annex A.

Each of the three regulators has provided a separate submission which broadly covers the questions set out in Annex B. The regulators' submissions are set out in Annexes to this paper. However, since as explained further below, the division of responsibilities between the CMA and the regulators is not as clear cut as in other jurisdictions, particularly since the regulators to varying degrees exercise competition as well as regulatory functions, there are some overlaps in the various submissions.

The CMA's paper starts with a background to the UK competition regime which explains in particular the various functions exercised by the CMA and the regulators. It is followed by a more detailed explanation of how the concurrency regime operates in the UK under which the FCA and the PSR have powers alongside the CMA to enforce competition law in their respective sectors. The submission then sets out an overview of the work that the CMA has undertaken within the financial services sector since 2008 with a particular focus on interactions it (or its predecessors) have had with the regulators in this sector. The submission covers the following competition functions: (i) competition enforcement; (ii) markets work; (iii) merger control; and (iv) consumer work.

1. Background to the UK competition regime

1. The financial services sector in the UK is regulated and subject to competition law enforcement by a number of different institutions namely the Competition and Markets Authority (CMA), the Financial Conduct Authority (FCA), the Payments Systems Regulator (PSR) and the Prudential Regulation Authority (PRA). These institutions are all relatively new either taking up the functions and responsibilities of previous institutions (CMA, FCA and PRA), or are newly established (PSR).

- **CMA:** The CMA acquired its functions as the United Kingdom's primary competition and consumer authority on 1 April 2014, and was created following the Enterprise and Regulatory Reform Act 2013 (ERRA).
- **FCA:** The FCA was established on 1 April 2013 following the Financial Services Act 2013, taking over responsibility for conduct and relevant prudential regulation from the Financial Services Authority. The FCA gained concurrent competition law powers on 1 April 2015.
- **PSR:** The PSR is a subsidiary of the FCA and was established on 1 April 2015 following the Financial Services (Banking Reform) Act 2013. The PSR is the economic regulator for the £81 trillion payment systems industry in the UK. The PSR gained concurrent competition powers under the Enterprise Act on 1 April 2014 and under the Competition Act 1998 on 1 April 2015.

PRA: The PRA was created as a part of the Bank of England by the Financial Services Act (2012) and is responsible for the prudential regulation and supervision of around 1,500 banks, building societies, credit unions, insurers and major investment firms.

1.1. Creation of the CMA

2. The creation of the CMA followed a government review of the UK's competition regime.¹ The CMA took on many of the roles and functions of the Office of Fair Trading (OFT) and the Competition Commission (CC).

1.2. Creation of the FCA, PRA and PSR

3. In July 2010, in response to the financial crisis, the Government published a consultation document² outlining proposals to overhaul the UK financial regulatory system in favour of more specialised and focused regulators. The consultation document identified a number of issues with the existing regime:

- the Financial Services Authority (FSA), had too broad a remit and insufficient focus to identify and tackle issues early and it relied too heavily on a 'tick box' approach to regulation;
- the Bank of England (BoE) did not have the tools or levers to fulfil its responsibility for ensuring financial stability;
- HM Treasury (HMT) had responsibility for maintaining the institutional framework but no clear responsibility for dealing with a crisis which put public funds at risk; and
- no single institution had the responsibility or authority to monitor the system as a whole, to identify risks to financial stability and act decisively to tackle them.

4. Following the consultation, a White Paper was published in June 2011,³ including a draft Financial Services Bill, which came into force as the Financial Services Act 2012 on 1 April 2013.

5. The [Financial Services Act 2012](#) (FS Act) implemented a new regulatory framework for financial services in the UK. Changes introduced by the FS Act include separating the prudential and conduct regulation of banking and insurance operations. Both forms of regulation were previously carried out by the Financial Services Authority (FSA). Since 1 April 2013, prudential regulation of banking operations has been carried out by the Prudential Regulation Authority (PRA), which was established by the FS Act, and conduct regulation by the FCA, which replaces the FSA.

6. The FCA is also responsible for the prudential regulation of those financial services firms not supervised by the PRA, such as asset managers, payment service providers (except those which are also credit institutions) and independent financial advisers.

¹ Growth, Competition and the Competition Regime, [Government Response to Consultation](#), March 2012

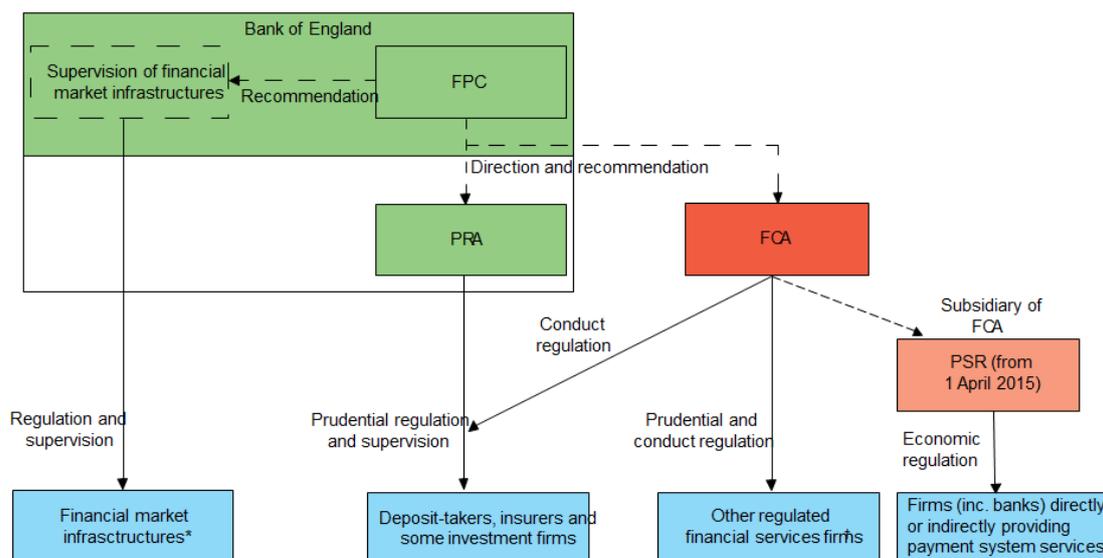
² [A new approach to financial regulation: judgement, focus and stability](#), published on 26 July 2010.

³ [A new approach to financial regulation: the blueprint for reform](#), published in June 2011.

7. In addition to the changes to the regulatory framework brought about by the FS Act, the [Financial Services \(Banking Reform\) Act 2013](#) (FSBRA) enacted a number of further reforms related to the UK's banking sector. In particular, FSBRA gave HMT and the relevant regulators, primarily the PRA, powers to implement some of the recommendations made by the Independent Commission on Banking (ICB)⁴ – in particular, the ICB's recommendations for ring-fencing requirements for banks.⁵ It also provided for the establishment of the PSR.

8. Figure 1 provides an overview of the financial institutions regulatory framework.

Figure 1. Overview of regulatory landscape



Note: *Excludes regulation of trading platforms, which is the responsibility of the FCA.

†Includes asset managers, hedge funds, exchanges, insurance brokers and financial advisers.

Source: CMA

1.2.1. The Bank of England

9. The Bank of England (BoE) is the central bank of the UK. The FS Act brought about a major expansion of the BoE's main responsibilities, which are now clearly defined by Parliament.

10. The BoE performs its main functions through the following committees and authorities:

⁴ The ICB was a UK government inquiry looking at possible reforms to the banking industry in the wake of the financial crisis of 2007-08. It was established in June 2010 and published its final report (also known as the Vickers report as the inquiry was chaired by Sir John Vickers) and recommendations in September 2011. Its headline recommendation was that banks should 'ring-fence' their retail banking divisions from their investment banking arms, to safeguard against riskier banking activities. The UK government announced the same day that it would introduce legislation to implement the recommendations.

⁵ The PRA is required to make policy to implement the ring-fencing of core UK banking services, following HMT's publication of secondary legislation. The government has stated its intention for ring-fencing to take effect from 1 January 2019.

- Financial policy (eg looking out for future risks and weaknesses in the financial system) – the Financial Policy Committee.
 - Monetary policy (eg setting interest rates, decisions on quantitative easing) – the Monetary Policy Committee.⁶
 - Safety and soundness of banks and other financial institutions – the PRA.
11. The FS Act established both the Financial Policy Committee and the PRA, and gave each of these bodies new responsibilities for the supervision of financial institutions.
12. The BoE has responsibility for overseeing certain payment systems, as well as securities settlement systems and central counterparties.⁷ The BoE’s oversight regime concerns only the stability of recognised payment systems and does not give rise to any responsibility for relationships between members of payment systems and individual users or consumers; these responsibilities fall to the FCA and PSR.
13. The BoE has entered into a joint Memorandum of Understanding (MoU)⁸ with the FCA, PRA and PSR, covering payment systems regulation.

1.2.2. The Prudential Regulation Authority

14. The PRA is responsible for the prudential regulation and supervision of all deposit-taking institutions (banks, building societies and credit unions), insurers and major investment firms. The PRA works alongside the FCA creating a ‘twin peaks’ regulatory structure in the UK,⁹ with the FCA carrying out conduct regulation of deposit-takers, and prudential and conduct regulation of other financial firms. Under the [Bank of England and Financial Services Act 2016](#),¹⁰ the PRA has become the Prudential Regulation Committee of the BoE, following the integration of the PRA into the BoE, ending its status as a subsidiary of the BoE.
15. The PRA has two primary statutory objectives:
- to promote the safety and soundness of the firms it supervises; and
 - specifically for insurers, to contribute to the securing of an appropriate degree of protection for policyholders.
16. The PRA has a secondary objective to facilitate effective competition in relevant markets, so far as reasonably possible. The PRA has no concurrent competition powers,

⁶ The activities of the Monetary Policy Committee are not relevant to this paper so are not discussed further.

⁷ Its oversight powers derive from Part 5 (Interbank Payment Systems) of the Banking Act 2009: [Part 5 \(Interbank Payment Systems\) Banking Act 2009](#).

⁸ [MoU](#) outlining how the PSR will interact with the BoE, the FCA and the PRA. The MoU will be reviewed annually. See also [FCA, BoE, PSR and PRA Statement](#) on the MoU’s review in July 2016.

⁹ The FCA is a separate institution and not part of the BoE.

¹⁰ Sections 12–13, [Bank of England and Financial Services Act 2016](#), amending the Bank of England Act 1998 and [Financial Services and Markets Act 2000 \(FSMA\)](#).

and this secondary objective only applies when the PRA is advancing its primary objectives and therefore does not operate as a self-standing objective.¹¹

1.2.3. The Financial Conduct Authority

17. The Financial Conduct Authority (FCA) replaced the FSA on 1 April 2013. It is accountable to HMT and Parliament, but operates independently of government and is funded entirely by the firms it regulates. The FCA's strategic objective is to ensure that the relevant markets function well. To support this, it has three operational objectives:¹²

- to secure an appropriate degree of protection for consumers;
- to protect and enhance the integrity of the UK financial system; and
- to promote effective competition in the interests of consumers.

18. The FCA must, so far as is compatible with acting in a way which advances the consumer protection objective or the integrity objective, discharge its general functions in a way which promotes effective competition in the interests of consumers.

19. As a result it must consider its competition objective when it discharges its general functions (broadly, making rules or codes, giving general guidance and determining its general policy and principles).

20. The matters to which the FCA may have regard in considering the effectiveness of competition in the market include:¹³

- the needs of different consumers who use or may use those services including their need for information that enables them to make informed choices,
- the ease with which consumers who may wish to use those services, including consumers in areas affected by social or economic deprivation, can access them,
- the ease with which consumers who obtain those services can change the person from whom they obtain them,
- the ease with which new entrants can enter the market, and
- how far competition is encouraging innovation.

21. The FCA can undertake reviews of markets under its sector specific legislation. It also has concurrent powers with the CMA to:

- enforce the competition law prohibitions under Chapters I and II of the Competition Act 1998 (CA98)¹⁴ and Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU) in relation to the provision of financial services; and
- conduct market studies and make market investigation references to the CMA under the Enterprise Act 2002 (EA02), for detailed review of a particular financial services market.

¹¹ The obligation on the PRA is only to facilitate competition, not to behave as a competition advocate, promoting competition in markets.

¹² Set out in section 1B FSMA (as amended by the FS Act).

¹³ Set out in the FS Act, Part 1A, Chapter I, s.1E

¹⁴ Chapters I and II CA98 are the UK's national competition prohibitions modelled on the EU prohibitions on anti-competitive agreements and abuses of a dominant position contained in Articles 101 and 102 TFEU.

22. The FCA and CMA entered into a MoU on 12 June 2014,¹⁵ setting out the framework for cooperation between the two authorities in relation to competition issues, consumer protection and access to payment systems. The FCA and CMA entered into a revised MoU related to concurrent competition powers on 21 December 2015 and a revised MoU related to concurrent consumer protection powers on 12 January 2016.¹⁶ These MoUs have been revised to reflect practical experience of the enhanced concurrency arrangements since they took effect in April 2014.

1.2.4. The Payment Systems Regulator

23. FSBRA created a new economic regulator, the PSR, with concurrent competition powers in relation to participation in payment systems. The PSR has been fully operational since 1 April 2015.

24. FSBRA also provided that the PSR will regulate those domestic payment systems that are designated by HMT.¹⁷

25. In discharging its functions relating to payment systems, the PSR must, so far as is reasonably possible, act in a way that advances one or more of its payment systems objectives, which are set out in statute.¹⁸ These payment systems objectives are:

- The competition objective – to promote effective competition in:
 - the markets for payment systems; and
 - the markets for services provided by payment systems;
 in the interests of those who use, or are likely to use, services provided by payment systems.
- The innovation objective – to promote the development of, and innovation in, payment systems in the interests of users of services provided by payment systems, with a view to improving the quality, efficiency and economy of payment systems. This includes in particular promoting the development of, and innovation in, infrastructure to be used for the purpose of operating payment systems.
- The service-user objective – to ensure that payment systems are operated and developed in a way that takes account of, and promotes, the interests of those who use, or are likely to use, services provided by payment systems.

26. The PSR has enforcement powers under Chapters I and II of CA98 and market study and market investigation reference powers under Part 4 of EA02, as far as these powers relate to participation in payment systems. These powers will be exercised concurrently with the CMA.

27. In August 2015, the PSR published guidance relating to the exercise of its concurrent competition powers under both EA02¹⁹ and CA98.²⁰ In December 2015, the

¹⁵ [MoU between CMA and FCA.](#)

¹⁶ [Revised MoUs on concurrent competition and consumer protection powers between CMA and FCA.](#)

¹⁷ See Annex 2.

¹⁸ Section 49(1) [FSBRA](#). For the PSR's objectives, see sections 50–52 FSBRA.

¹⁹ [PSR's Market Studies Guidance.](#)

PSR and CMA entered into a new MoU on concurrent competition powers.²¹ This MoU reflects practical experience of the enhanced concurrency arrangements since they took effect in April 2014.

2. CMA relationship with the financial regulators

28. Much of the CMA's work with the financial regulators is governed by the formal concurrency arrangements (which are described in more detail in the following section). This covers our interactions on competition law cases and market investigations.²² Below we set out in more detail the formal concurrency arrangements and the concurrency regime that governs those. We then set out some example cases from our competition law work and our markets work which provide examples of how we interact and seek to draw out where possible the issues around transparency and financial stability, where these have arisen.

29. These concurrency arrangements do not, however, extend to our work on mergers or consumer projects. For these projects we have less-formal arrangements in place. For merger control in the UK, the CMA has primary responsibility, but seeks input from relevant sectoral regulators where necessary. It is also open to the regulators to input their views through the CMA's formal consultation process. Similarly, where the CMA is undertaking a consumer enforcement project in the financial services sector we will seek the input of the relevant regulator(s) where necessary.²³

30. Our interactions with the financial services regulators are enhanced by the fact that both the FCA and the PSR have a primary duty to promote effective competition and the PRA has a secondary duty to facilitate effective competition. This means that we have a commonality of overall objective, albeit with different emphasis.²⁴ This also means that when these regulators are developing their own regulatory policy proposals they are able to take competition issues into account and have their own internal capability to assess the impact on competition of their own policy proposals. As the CMA meets all three regulators regularly on a bilateral or multilateral basis, there is scope for engagement and discussion on relevant policy proposals where that is appropriate.

3. Concurrency

31. 'Concurrency' is the term for the UK's system of competition law enforcement in the regulated sectors. By contrast with most other major competition law systems, in the

²⁰ [PSR's CA98 Guidance.](#)

²¹ [MoUs between PSR and CMA.](#)

²² Even though the PRA is not a concurrent regulator and is not therefore subject to the same formal requirements to cooperate with the CMA as the FCA and the PSR, the CMA has received input from the PRA in relevant cases, such as the retail banking market investigation (see further below).

²³ For consumer enforcement cases, unlike for merger control, sector regulators also have powers to enforce consumer protection legislation.

²⁴ In particular, the PRA's secondary duty only applies when it is advancing its primary objectives.

UK the power to enforce the competition prohibitions in a regulated sector is in the hands of both the CMA, as national competition authority, and the regulator responsible for the sector concerned. Crucially, in respect of any particular regulated sector, neither the CMA nor the regulator has exclusive responsibility for enforcing competition law; in any regulated sector, the CMA and the regulator have *concurrent* powers to apply the competition prohibitions.

32. Specifically, sector regulators in the UK have concurrent competition powers in their sectors with CMA to:

- Apply and enforce Articles 101 and 102 of TFEU in the UK and Chapters I and II CA98 in relation to their respective sectors; and
- Carry out market studies and make market investigation references in their respective sectors under Part 4 of EA02.

33. As noted above, sector regulators do not have jurisdiction to carry out merger investigations in the UK.

34. In the case of the financial sector, the FCA has concurrent powers in relation to the provision of financial services and the PSR has concurrent powers in relation to participation in payment systems. The PRA does not, however, exercise any concurrent powers.

3.1. Origins of concurrency and recent reforms

35. The system of concurrency has been in place in the UK since March 2000, when the UK adopted its own national competition prohibitions in CA98, modelled on the EU prohibitions on anti-competitive agreements and abuses of a dominant position.

36. However, the Government in 2012 expressed the view that “general competition law may not be being enforced as proactively as it could be” in the regulated sectors. The Government could have abandoned concurrency at this stage, but chose to retain it, recognising that concurrency makes use of the complementarity of skills as between the sector regulators and the national competition authority (CMA). The sector regulators have a degree of knowledge, experience and expertise of the sectors they regulate that a generalist competition authority cannot match. The national competition authority, for its part, has a depth of competition experience, and an economy-wide perspective, that no individual sector regulator can be expected to have.

37. Consequently, the Government drew up a series of reforms to enhance and strengthen, rather than replace, concurrency. These were part of a package of changes to the UK competition regime which were enacted by Parliament in ERRRA. The reforms came into effect on 1 April 2014, the same day that the CMA acquired its powers from its predecessor bodies, the OFT and the CC.

38. The reforms sought to encourage regulators to enforce competition law more proactively, in particular, by placing emphasis on the importance of competition law in the areas covered by sector regulation. However, changes were also made to improve coordination between the CMA and the regulators with concurrent powers. These reforms were in part designed to address some of the other problems with the original concurrency arrangements that critics had identified – in particular, concerns about consistency and about quality of decision-making.

3.2. Greater emphasis on competition law enforcement

39. In terms of addressing the Government's view that use of concurrent competition powers by the sector regulators had historically been insufficient, the new concurrency regime introduced a requirement for the sector regulators²⁵ to consider whether the use of their CA98 powers is more appropriate before exercising specified sectoral powers. The duty is tailored to the individual regimes, which have differently formulated duties on and powers for the regulators.²⁶

3.3. Concurrency arrangements

40. The [Concurrency Regulations](#)²⁷ introduced provisions relating to the performance by the CMA and the sector regulators of their concurrent functions under the UK and EU prohibitions on anti-competitive agreements and abuse of dominance. These include:

- Allowing for the exchange of information between the CMA and the regulators (Regulation 3)
- Determining who should exercise concurrent functions in relation to a case (Regulation 4)
- Resolving disputes as to who should exercise concurrent functions in relation to a case, including specifying the circumstances in which the CMA must decide which authority is to exercise concurrent functions in relation to a case (Regulation 5)
- Transfer of a case from one authority to another (Regulation 7)
- Providing the CMA with the power in certain circumstances to take over a case that has been allocated to a regulator (following consultation with the relevant regulator) and up until the point when a statement of objections has been issued - after which the agreement of the regulator must be obtained (Regulation 8)²⁸
- Requiring whichever authority is investigating a CA98 case (whether it be the CMA or a sector regulator) to have mechanisms in place to share information with all other authorities competent to investigate that case, including drafts of key documents such as statements of objections, commitments decisions, infringement decisions and no grounds for actions decisions (Regulation 9).

41. The CMA has published guidance as to the use of concurrent competition powers and how such powers are coordinated with the sectoral regulators.²⁹ The CMA has also

²⁵ With the exception of NHS Improvement (Monitor) at this time.

²⁶ In the case of the FCA, the duty is set out under section 234K(1) of FSMA and, in the case of the PSR, the duty is set out under section 62 of FSBRA.

²⁷ [Competition Act 1998 \(Concurrency\) Regulations 2014 \(SI 2014/536\)](#)

²⁸ The Regulation 5 and 8 powers do not apply to NHS Improvement in respect of cases that are principally concerned with the provision of healthcare services by the NHS in England. Unlike other economic regulators, NHS Improvement does not have duty to promote competition

²⁹ [Regulated industries: Guidance on concurrent application of competition law to regulated industries](#) (CMA10)

entered into bilateral MoUs with all of the sector regulators.³⁰ Both the guidance and the MoUs expand on how the concurrency arrangements are to operate in practice.

3.4. Greater accountability to Parliament and public

42. The CMA must now report annually, to Parliament and to the public, on the operation of the concurrency regime. In order to provide a baseline against which future performance can be assessed, the CMA published a baseline report when the new arrangements came into effect in April 2014 and has since published three annual reports.³¹

43. There are also other mechanisms for ensuring accountability, including the ultimate discipline in the form of a power under ERRA for the Government to remove a regulator's concurrent powers if not used effectively.

3.5. Institutional mechanisms

44. The CMA's Sector Regulation Unit facilitates a strategic dialogue with the sector regulators on the promotion of competition and ensures effective co-operation and coordination between the CMA and the sector regulators through the UK Competition Network (UKCN) that was established when the new concurrency arrangements came into effect.

45. The UKCN brings together the CMA with the sector regulators having concurrent powers.³² The UKCN's principles are set out in its Statement of Intent, which is in Annex B to the [Regulated industries: Guidance on concurrent application of competition law to regulated industries](#).

46. As well as facilitating cooperation under the concurrency arrangements, the UKCN acts as a forum for the CMA and the sector regulators to consider more generally how best to promote competition and competitive outcomes for the benefit of consumers in the regulated sectors.

3.6. Concurrency in practice in competition enforcement cases

47. As is clear from the CA98 cases referred to in the section that follows, the system of concurrency means in practice that the CMA and the two concurrent regulators in the financial services sector, namely the FCA and the PSR, cooperate closely in relation to competition enforcement. The Concurrency Guidance sets out the sort of factors³³ that are taken into account in deciding whether the CMA or the relevant sector regulator is better placed to conduct an investigation. These include, for example, the relevant sectoral knowledge of the CMA or the regulator; experience in dealing with the parties or with

³⁰ These Memoranda are available on the CMA website at: <https://www.gov.uk/government/collections/uk-competition-network-ukcn-documents#memorandums-of-understanding>

³¹ All four reports are available on the CMA website at: <https://www.gov.uk/government/collections/uk-competition-network-ukcn-documents#annual-report-on-concurrency>

³² However, the healthcare regulator, NHS Improvement, attends the UKCN with observer status.

³³ See paragraph 3.22 of the Concurrency Guidance.

similar issues and whether it is necessary for the CMA to conduct a case in order to develop UK competition policy or to provide greater deterrent and precedent effect.

48. Since the FCA and PSR have acquired concurrent powers, it is generally (but not always) the case that the relevant financial services regulator has undertaken CA98 cases in its respective sector. In such cases, the regulator brings to bear its own sector expertise while drawing on the CMA's in-depth competition enforcement experience and economy-wide perspective. By contrast, in cases where the CMA carries out the investigation, it relies on the relevant financial services regulator to bring the sector knowledge.

49. This system works effectively because, in addition to the formal requirements to share information (referred to above), the CMA and the relevant financial services regulators cooperate to a significant extent informally, sharing know-how, best practice and resources, e.g. through secondments.

3.7. Concurrency in practice in markets work

50. As explained above, the PSR and the FCA also have powers under EA02 to conduct market studies and make market investigation references.

51. There are fewer formal requirements in relation to the exercise of concurrent functions. The CMA, FCA and PSR have a duty to consult each other before exercising concurrent functions under the market provisions. The FCA and PSR must also provide the CMA with any information relevant to an investigation carried out on a market investigation reference they have made and with any other assistance that the CMA might reasonably require.

52. In practice, as the examples of markets work in the section that follows indicate, there has been good cooperation between the CMA and regulators on the market investigation references to the CMA, including secondments of individuals. In these cases, the CMA has worked closely with the FCA and the PSR, including in relation to the development and implementation of remedies that have resulted from the investigation. Although it is not a concurrent regulator, the CMA has also worked with the PRA where issues have arisen on which the PRA could provide input.

4. Competition Enforcement

53. The focus of this submission is on the interaction between the CMA and the financial services regulators on competition matters and therefore, in relation to CA98 cases, the period following the FCA's and PSR's acquisition of concurrent powers is of most interest. However, before considering the cases in the financial services sector that have been launched since those regulators acquired their concurrent powers, we have highlighted below a couple of CA98 cases that were undertaken by the OFT, the CMA's predecessor body, prior to the concurrency arrangements coming into effect.

54. In one case, the OFT, found that, between October 2007 and February or March 2008, certain individuals at the Royal Bank of Scotland (RBS) had unilaterally disclosed generic as well as specific confidential future pricing information to their counterparts at Barclays Bank. The OFT also found evidence that the information was taken into account by Barclays Bank in determining its own pricing.

55. The information concerned the pricing of loan products to large professional services firms, such as solicitors, accountancy and real estate firms, in respect of which RBS and Barclays Bank were the main providers. As well as general disclosures on future pricing, the investigation found that RBS had supplied specific confidential future pricing information in relation to two proposed loan facilities.

56. In March 2010, RBS agreed to pay a fine of £28.59 million after admitting to having breached competition law. The fine was reduced from £33.6million to reflect RBS's admission and agreement to cooperate. The matter was brought to the OFT's attention by Barclays Bank under the OFT's leniency policy, where a company which is the first to report its participation in an infringement may qualify for immunity from penalties.

57. In 2012, the OFT conducted an initial assessment of Visa's sponsorship arrangements with the London Organising Committee of the Olympic Games and Paralympic Games insofar as they conferred payment card exclusivity on Visa for the purchase of official Olympic merchandise and for the use of ATM machines at official Olympic Games venues. Based on its initial assessment, the OFT decided not to open a formal investigation. This is because the OFT considered that the aspects of the sponsorship arrangements under consideration were unlikely to give rise to material consumer harm. As part of its initial assessment, the OFT also considered the availability of alternative payment methods (including cash and the use of cheques).

58. Since the FCA acquired its concurrent competition functions in 2015, it has launched two CA98 investigations in the financial services sector.

59. The FCA launched its first investigation into suspected anti-competitive agreements and concerted practices under CA98 and TFEU in March 2016. A second case was opened in March 2017.

60. The FCA and the CMA have worked closely in progressing these investigations, sharing key information and commenting on key documents, as provided for in the Concurrency Regulations and the MoU. Additionally, the information-sharing process has been augmented with more informal discussions and the sharing of know-how and relevant expertise. This has included the sharing of relevant policy or practical experience (eg sharing internal guidance and template documents) and has also involved officials with specific knowledge in discussions at key stages of the investigations. Short-term secondments have also been arranged where appropriate (eg with the CMA's CA98 Registry team to facilitate the exchange of know-how on access to file issues).

61. In September 2017, the CMA launched an investigation into suspected breaches of the Chapter I prohibition of the Competition Act 1998 and Article 101 of TFEU in the use of certain retail 'most favoured nation' clauses by a price comparison website in relation to home insurance products.³⁴ The CMA has previously expressed particular concerns where the rival outlets covered by the retail most favoured nation clause include rival comparison websites (so-called 'wide most favoured nation' clauses).

62. The investigation involves the provision of financial services, in respect of which the CMA and the FCA have concurrent functions to enforce competition law. In this case, it has been agreed that the CMA will exercise those functions in relation to this

³⁴ Retail 'most favoured nation' clauses in online retailing require the provider of a product (good or service) to price that product via the online outlet (in this case, the price comparison website) at a price that is as low or lower than the price at which the product is sold at rival outlets.

investigation, given, in particular, the CMA's experience of considering most favoured nation clauses in other cases,³⁵ the wide range of sectors in which such clauses may be in use, and the potentially broader competition policy implications of considering them.

63. In the course of the investigation, the CMA is liaising closely with, and receiving support from, the FCA, making best use of the FCA's sector expertise and of the concurrency system.

64. The CMA is also working closely with the PSR with respect to its CA98 work, including its pipeline of CA98 cases.

5. Markets work

65. 'Market studies' are preliminary reviews of how markets work and form the first phase of the UK markets regime. One of a number of possible outcomes of a market study is to make a market investigation reference which would involve the CMA conducting an in-depth investigation into whether any feature, or combination of features, of a market in the UK for goods or services prevents, restricts or distorts competition. In the section that follows, we describe a number of relevant market investigations and market studies in the financial services sector.

5.1. Retail Banking Market Investigation

66. In November 2014, the CMA Board launched a phase 2 market investigation into the supply of retail banking services to personal current account (PCA) customers and to small and medium-sized enterprises (SMEs) in the United Kingdom (UK).^{36,37}

67. In a market investigation, if the CMA decides that there is a feature or a combination of features that prevents, restricts or distorts competition, then there is an adverse effect on competition (AEC). Should an AEC be found, the CMA is also required to decide whether action should be taken by the CMA or a recommendation be made to others to take action for the purpose of remedying, mitigating or preventing the AEC or any resulting detrimental effect on customers.³⁸

68. Key areas of our analysis were:

- Customer and SME engagement in current account markets.
- Banks' incentives to compete in the provision of current accounts.
- SME engagement in SME lending.
- Banks' incentives to compete in the provision of SME lending.
- Barriers to entry and expansion.

³⁵ Including the [private motor insurance market investigation](#) and the recent [market study into digital comparison tools](#).

³⁶ [Retail banking market investigation ToR](#).

³⁷ In relation to personal customers, the terms of reference (ToR) included only the supply of PCAs, which includes overdrafts. In relation to SMEs, our ToR were broader; they included business current accounts (BCAs) and lending products, but they excluded insurance, merchant acquiring, hedging and foreign exchange.

³⁸ EA02, section [134](#).

- Market structure and market power in the provision of PCAs and SME banking.

69. The conclusions from this analysis were that there was weak customer response to price and quality in the PCA, business current account (BCA) and SME lending markets and this meant that the discipline imposed by customers on banks through switching and the threat of switching was not as strong as it should have been.

70. Further, as a result of the weak customer response including product linkages in respect of BCAs and SME lending, customer acquisition costs were high, which made it difficult for new entrants and small banks to expand, and was a barrier to entry and expansion. That barrier to entry and expansion, combined with the economies of scale and scope in retail banking markets, gave incumbent banks first mover advantages as they have an established base of customers over which to spread their costs. Such banks also had lower costs of funds for lending in particular due to access to an established book of lower cost retail deposits.

71. These incumbency advantages were particularly strong for longer-established banks with larger existing customer bases. In relation to BCAs and SME lending such incumbency advantages were also particularly strong for banks with an existing PCA or BCA customer base given the product linkages between PCAs and BCAs and BCAs and SME lending respectively and, in relation to SME lending, the information asymmetries between an SME's BCA provider and other providers of lending products.

72. An overall consequence of this was that larger longer-established banks were able to maintain high and stable market shares.

73. The CMA therefore found three separate, but linked AECs:

- A combination of low customer engagement, barriers to searching and switching and incumbency advantages in the provision of PCAs.
- The combination of low customer engagement, barriers to searching and switching, product linkages and incumbency advantages in the provision of BCAs.
- The combination of barriers to searching, strong product linkages, the nature of demand for SME lending products, information asymmetries and incumbency advantages in the provision of SME lending.

74. To address the linked AECs, the CMA put in place an integrated package of remedies which consisted of four elements:

- Three cross-cutting foundation measures that will underpin increased competition. These have the object of increasing transparency and in turn increasing customer engagement and making it easier for personal and business customers to compare the prices and service quality of different providers and of encouraging the development of new services.
- Additional measures to make current account switching work better, including building on and improving the existing current account switching service (CASS).
- A set of measures aimed at PCA overdraft users, including increasing transparency of usage and fees.
- A set of measures targeted at the specific problems in SME banking, including increasing transparency, making it easier for SMEs to compare different providers and reducing the hold that incumbent banks have in the market for BCAs and SME loans.

5.1.1. Overview of the remedy package

Foundation measures		
	Open Banking standard Service quality information Customer prompts	
Current account switching measures	PCA overdraft measures	Additional banking measures for small businesses
Better governance of guaranteed switching service	Overdraft alerts with grace periods Monthly maximum charge (MMC)	Competition to develop SME comparison tools
Extended redirection of payments following switching	Improved account opening and switching process	Loan rate transparency Loan price and eligibility indicator
Customer access to transactions history		Standard information requirements for BCA opening
Customer awareness and confidence		Sharing of SME information 'Soft' searches Role of professional advisers

5.1.2. Foundation measures

75. The foundation of the remedy package is provided by three cross-cutting measures whose objective is to promote customer engagement and in turn increase transparency, which will help customers make reliable and easy comparisons between banks based on their products' prices and features, quality of service and customers' own transaction history.

76. These measures and increased transparency aim to empower SMEs and personal customers to take greater control of their banking arrangements, reduce the costs to customers of shopping around, and encourage the development of a dynamic intermediary sector including providers of digital comparison tools and other FinTech advisory services.

77. Of all the measures considered, the timely development and implementation of an open API³⁹ banking standard from the Open Banking remedy has the greatest potential to transform competition in retail banking markets. It will significantly increase competition between banks, by making it much easier for both personal customers and SMEs to compare what is offered by different banks and by paving the way to the development of new business models, by banks and non-banks alike, offering innovative services to customers.

78. The second foundation measure will increase transparency to banks' customers around information on service quality. Banks are required to display prominently indicators of service quality. Data will be collected on a standardised basis, so that customers can easily compare across banks. Further, banks are required to collect and publish a wider range of additional quality measures. We made a recommendation to the FCA to undertake this work. The information on service quality is due to be available from August 2018.

³⁹ APIs are the key to the digital services that are used on computers and smartphones. They enable users to share information, for example on location or preferences. They are the technological drivers behind digital applications like Facebook, Google Maps and Uber. In banking, APIs can be used to share, in a secure environment, information such as the location of bank branches, prices and terms of banking products. APIs may also be used, with the customer's informed consent, to share securely their transaction history to enable access to tailored current account comparisons and other services.

79. The third foundation measure deals with the lack of customer engagement found during the investigation. The CMA recommended that the FCA undertake work to research and test occasional reminders ('prompts'), to be sent to customers and SMEs at suitable times, to encourage them to consider their current banking arrangements and shop around for alternative banking services.⁴⁰

5.1.3. Current account switching measures

80. The market investigation found that both personal and business customers fear that switching current accounts is burdensome and time-consuming, and worry that something might go wrong. The risk of something going wrong is of particular concern to SMEs.

81. The Current Account Switching Service (CASS) had already made a positive difference to the switching process and it was generally working well, but many customers either did not know about or did not have confidence in CASS. We therefore required:

- the governance of CASS to be strengthened, and have it overseen by a regulator;
- customer awareness of and confidence in CASS to be increased; and
- improvements to specific aspects of the switching process, with a longer period of redirection of transactions from the old to the new account.

82. The remedies also guaranteed the provision of transaction history on the old account once an account is closed.

5.1.4. PCA overdraft measures

83. The foundation remedies and current account switching measures will enhance competition and deliver benefits for all types of PCA and SME banking customers. However, the investigation found that PCA overdraft users have particular difficulties in engaging with the market, searching and switching. It also found that the effects of the problems identified are particularly acute for overdraft users, especially unarranged overdraft users who have the most to gain from switching. Further measures were targeted at overdraft users to increase competition and improve outcomes for such customers.

84. The primary objective of these additional measures was to increase transparency and customers' awareness of their overdraft usage and help them manage it. This will help PCA customers save money by avoiding unnecessary overdraft charges, and, by increasing customer awareness of and responsiveness to overdraft fees and charges, should also put downward pressure on these charges. These additional measures required banks to automatically enrol all their customers into an unarranged overdraft alert and recommended to the FCA that it undertake further work to identify, research, test and, as appropriate, implement measures to increase overdraft customers' engagement with their overdraft usage and charges.

85. Further, to address concerns about the cumulative costs of overdraft charges for heavier unarranged overdraft users, PCA providers were required to set a monthly maximum charge (MMC) for use of an unarranged overdraft facility. The MMC, which

⁴⁰ The CMA also recommended that the FCA that, subject to the results of its research and testing, should implement, monitor and (when necessary) update such prompts.

will be set by each PCA provider, will specify the maximum amount that the provider will charge a customer during any given month.

86. The MMC remedy will benefit overdraft customers in two main ways:

1. It will improve transparency. The introduction of a common measure of this aspect of overdraft pricing will provide a point of comparison for customers wishing to choose a PCA.
2. It will provide some protection for the heavier unarranged overdraft users – a group that incurs the highest charges for using their PCA, but are least likely to switch to another provider.

5.1.5. Additional SME banking remedies

87. Given the specific nature of the competition problems identified in SME banking, the CMA considered that additional targeted measures were required in order to deal with all of the issues identified.

88. These remedies will increase transparency by improving the information available to SMEs about loan and overdraft charges and eligibility, make it easier for SMEs to compare the products of different banks, and make it easier for SMEs to open a new BCA. When SMEs have better information about what the market offers and are able to move more freely between providers, they will be able to make better choices, and the banks will have to compete harder for their custom.

89. The CMA established a ‘challenge prize’, run by the independent charity Nesta (the ‘Open Up Challenge’) to identify possible solutions to the problem of limited access by SMEs to information. This approach is most likely to facilitate innovative and commercially sustainable solutions and should encourage new suppliers to enter the market without precluding an ongoing role for existing providers of comparison services. Further, this approach will stimulate the development of comparison services and other advisory services for SME banking.

90. To further increase transparency, the CMA also required that all lenders offering loans publish standard rates for unsecured loans and overdrafts of up to £25,000 in value and that this information be made available as open data to intermediaries. Further, the largest SME lenders⁴¹ are required to offer a tool on their websites so that business customers can get an indicative quote and know, provisionally, whether they would be eligible for the loan or overdraft they seek.

5.1.6. Transparency

91. It can be seen from the above that increasing transparency is an important way in which the CMA considers that the AECs that were found in the PCA, BCA and SME lending markets can be addressed. Various measures we have included in our package of remedies increase transparency to customers.

⁴¹ RBSG, LBG, Barclays and HSBCG.

Measure	Increases transparency
Open Banking	The release of i) product information (eg information on pricing, charges (including interest rates), features and benefits, terms and conditions and customer eligibility criteria) ii) reference information (eg information on branch and business centre locations, branch opening times and ATM locations) and iii) service quality indicators (eg the core service quality metrics required by the CMA and any additional service quality metrics required by the FCA) through standard open APIs provides third parties with access to information not previously readily available which they can make available to customers and SMEs in easily accessible ways. The release of PCA and BCA transaction data sets through standard open APIs will allow customers and SMEs much easier access to their own transaction data, which they can then securely share with trusted third parties, which could include other banks, comparison sites, credit scoring agencies and financial technology companies (Fintechs). This will allow customers and SMEs to more easily compare products and choose those that are best for them, as well as allow new and current providers to develop new products and services eg money management tools, to better meet customer needs.
PCA and BCA service quality indicators	Requiring banks to develop and publish comparable service quality indicators will provide greater transparency to customers and SMEs on the level of service they can expect from different providers, helping them to make better informed decisions about which provider will best meet their needs. We also expect this transparency to increase the focus of providers on improving the levels of service they provide to customers.
Unarranged overdraft alerts	Requiring banks to alert PCA customers when they are about to use an unarranged overdraft facility will provide opportunities for customers to avoid unarranged overdraft charges, by either deciding not to undertake a purchase or transaction, or by moving money from another account.
MMC	Requiring banks to set a MMC and to inform customers of this will provide customers with greater transparency around the amount they could be charged in any month for using an unarranged overdraft facility. Customers will also more easily be able to compare different banks.
Nesta Open Up Challenge	Facilitating the emergence of comparison tools which will enable SMEs to make better informed decisions about their banking needs
Publication of SME loan and overdraft rates and loan price and eligibility tools	This will provide additional information to SMEs and to intermediaries, reducing searching costs and enabling SMEs to make better informed borrowing decisions.

5.1.7. Work with regulators during the investigation

92. The CMA developed constructive working relationship with all three of the regulators during the market investigation. This included with:

- All three on understanding the regulatory landscapes and frameworks in which the parties subject to the investigation operate;
- All three in the provision of appropriate information to inform our investigation;
- The FCA on its work on current accounts generally, and overdrafts specifically;
- The FCA on its work on testing and trialling different information remedies using randomised control trials (RCTs);
- The FCA on its implementation of the recommendations we made to it;
- The PSR on its work on reviewing competition in the payments services markets, in particular, its Infrastructure Market Review and its Indirect Access Market Review;⁴²
- The PSR on its potential role providing oversight of the work of Bacs as operator of CASS; and

⁴² See Annex 2.

- The PRA's research of the impacts of internal ratings based (IRB) models used by the larger and more established banks, on the pricing of mortgages.

93. Further, a member of FCA staff joined the CMA on secondment to work on the investigation, and during the remedies implementation phase, two members of CMA staff joined the FCA on secondment to facilitate its work on our recommendations, in particular those relating to the research and testing of customer prompts and overdraft alerts. In addition, during the remedies implementation phase the FCA has been an active member of our Remedies Implementation Programme Board⁴³ and attends the Open Banking Implementation Steering Group.

5.2. Digital Comparison Tools Market Study

94. In September 2017 we published the final report from our market study into digital comparison tools (DCTs). As part of the study we looked at the regulations that DCTs are subject to both in regulated sectors⁴⁴ and under the general law.⁴⁵ We also looked at the requirements of voluntary accreditation schemes operated by regulators in energy and telecoms. We identified four high level principles embedded in general law that require DCTs to treat users fairly by being Clear, Accurate, Responsible and Easy to use (CARE).⁴⁶

95. In financial services, DCTs are subject to statutory regulation by the FCA as a result of their activities as credit brokers and insurance intermediaries. The regulation of DCTs is a combination of the implementation of European Directives and the FCA's own specific requirements included in its relevant handbooks.⁴⁷ With the exception of price comparison websites listing payday loans (which we discuss below in the section on the pay day lending market investigation) DCTs are not subject to additional requirements beyond those required for other intermediaries.

96. We found that the FCA's approach to regulation, which treats DCTs as it does other brokers and intermediaries generally,⁴⁸ reduces the risk of it introducing regulation

⁴³ The CMA established the Remedies Implementation Programme Board to assist with the coordination of the implementation of inter-related remedies from the investigation. Attendees are CMA, FCA, Open Banking Implementation Trustee, HMT, Bacs, Nesta, UK Finance.

⁴⁴ Specifically, financial services, telecommunications and energy.

⁴⁵ This includes consumer and competition law as well as data protection and equalities law. Our detailed assessment of regulation is set out in [Paper C: The application of the law and regulation to digital comparison tools](#)

⁴⁶ The CARE principles are supported by a more detail analysis of the CMA's expectations of how DCTs should operate based on analysis of relevant general law. This is set out in chapter 5 of the [final report](#) and the accompanying [Paper C: The application of the law and regulation to digital comparison tools](#)

⁴⁷ [FCA's Handbook of rules and guidance](#).

⁴⁸ In financial services, the FCA sets both broad principles and detailed rules that are not specific to DCTs. Broadly the FCA adopts principles based regulation. In some areas, such as in relation to consumer credit advertisements, requirements may be more prescriptive, for example the presentation of Representative APR.

that risks distorting competition or discouraging innovation.⁴⁹ The FCA has powers to enforce its requirements but this is balanced by its duty to consult on the changes it makes and carry out impact assessments.

97. In some markets, such as general insurance, the FCA has conducted various pieces of work including Thematic Reviews and Market Studies which have led DCTs and financial services providers to improve presentation of information.

98. We made several recommendations to government and regulators to improve DCTs:

- Expanding the scope of the energy and telecoms regulators to regulate intermediaries directly rather than needing to rely on voluntary accreditation schemes. In the shorter term we recommended the energy and telecommunications regulators should removing coverage requirements that risk distorting competition and prescriptive requirements that might deter innovation from their voluntary accreditation schemes.
- The need for regulators and, in particular, the FCA to work with DCTs and suppliers to improve the presentation and comparability of non-price information and mandatory and voluntary excesses.
- Specific recommendations to individual regulators to make better quality data available as well as a more general set of approaches to facilitate and enhance the ability DCTs in supporting consumer engagement.⁵⁰

99. In car and home insurance we observed that consumers were asked to choose a voluntary excess as part of entering their criteria. However, as mandatory excess can vary significantly between policies, consumers were unable to easily compare the price of insurance policies with the same total excess. Similarly, we recommended that the FCA continue to promote improved presentation of comparable non-price information on DCTs to reduce the risk of hollowing out.⁵¹

100. We identified that the volume of information that consumers need to enter to generate quotes in car and home insurance means that consumers may be deterred from using more than one DCT to compare prices. We recommended that the FCA should consider whether it would be possible to help consumers transfer this information across DCTs.⁵²

101. We also set out our analysis of the current and potential impact of contractual restrictions between DCTs and suppliers including most-favoured nation clauses, non-

⁴⁹ In the energy and telecommunications voluntary accreditation schemes some DCTs have been unable to become accredited because their service, such as automatic switching does not match the typical model of presenting a tabular comparison.

⁵⁰ These general set of approaches are set out in detail in [Paper D: Making comparison easier and more effective](#)

⁵¹ Stakeholders expressed concern over the potential for competition to be focused solely on price, leading to providers reducing quality. Improved non-price information on, for example, the nature and extent of cover included in an insurance policy might support consumers choosing more appropriate cover.

⁵² This might for example be implemented by the FCA working with parties to facilitate the development a common data format and API to support implementation data portability requirements of GDPR.

resolicitation agreements and non brand-bidding and negative matching agreements in paid search.

102. As an outcome of the DCT market study we launched a competition enforcement case on wide-MFNs in home insurance on which we have been cooperating with the FCA⁵³ and we opened a consumer law investigation into online hotel booking.⁵⁴ Separately we launched consumer enforcement action against two online car hire intermediaries.⁵⁵

5.3. Investment Consultancy Services and Fiduciary Management Services Market Investigation

103. From November 2015 to June 2017, the FCA ran a market study into asset management.⁵⁶ As part of this study it identified a number of potential competition concerns relating to investment consultants, who play a significant role in the market for institutional asset management. In its interim report, it proposed making a reference to the CMA to carry out an in-depth market investigation of this market. Undertakings in lieu of a reference were proposed by three large investment consultants, but, following consultation, the FCA rejected these.

104. In September 2017, the FCA, in exercise of its powers under section 131 of EA02, made a reference to the CMA for the purposes of carrying out a market investigation into the supply and acquisition of investment consultancy services and fiduciary management services to and by institutional investors and employers in the UK.

105. The CMA investigation began in September and it has already consulted on an Issues Statement indicating the proposed lines of investigation, theories of harm and potential remedies to any adverse effect on competition that it may find.⁵⁷

106. The CMA has identified the following three theories of harm, to be tested in its investigation, based on the issues identified as part of the FCA's work and our initial thinking:

- Difficulties in customers' ability to effectively assess, compare and switch investment consultants result in weak incentives for investment consultants to compete for customers (Demand side and information issues);
- Conflicts of interest on the part of investment consultants reduce the quality and/or value for money of services provided to customers (Conflicts of interest);
- Barriers to entry and expansion reduce competitive pressure on investment consultants, which leads to worse outcomes for customers (Barriers to entry and expansion).⁵⁸

⁵³ [Price comparison website: use of most favoured nation clauses.](#)

⁵⁴ [Online hotel booking.](#)

⁵⁵ [Car rental intermediaries.](#)

⁵⁶ Asset managers manage investments on behalf of individual retail investors and institutional investors such as pension schemes – for more information see the [FCA Asset Management Market Study](#).

⁵⁷ Investment Consultancy Services and Fiduciary Management Services, [Issues Statement](#).

⁵⁸ Ibid, paragraph 43.

107. Following the FCA's consultation in November 2016 on its provisional decision to make a market investigation reference of the investment consultancy services and fiduciary management services market, the CMA carried out some preliminary work on the investigation in the event that a reference would be made. In this regard, the CMA liaised closely with the FCA to understand the issues that it identified in the course of its study. Now that the market investigation is underway, the CMA is engaging widely with firms and trade bodies in this sector and continues to liaise closely with the FCA, as well as the Pensions Regulator.

5.4. Payday lending Market Investigation

108. In the CMA's market investigation on payday lending, we worked closely with the FCA, which had been given a legal obligation to introduce a price-cap. In anticipation of the introduction of a cap, we focused on the ways that borrowers searched and applied for loans.⁵⁹

109. We found that borrowers focused heavily on the likelihood of acceptance and less on the cost of the loan. Borrowers' tendency to be over confident in their ability to repay a loan meant they were particularly insensitive to competition.

110. A significant proportion of borrowers accessed lenders through intermediaries known as lead generators and price comparison websites. We had concerns about the presentation of information and recommended that the FCA should introduce minimum standards for price comparison sites. In developing our recommendation and our remedies more generally we met regularly with the FCA to discuss the FCA's work in designing the price-cap and how best to work within the constraints of the fully harmonised Consumer Credit Directive and the FCA's ongoing supervision of payday lenders and credit brokers.

111. In anticipation of enhanced standards the CMA also imposed a requirement on lenders to appear on at least one FCA authorised price comparison website (PCW) and include a prominent link on the lender's homepage to a PCW it was listed on. As part of the remedy design, the impact of both listing requirements for lenders and coverage requirements for PCWs on bargaining between lenders and PCWs was considered.⁶⁰ We concluded that requiring lenders to appear on at least one PCW best aligned with incentives and gave PCWs the ability to compete for lenders and borrowers through commission and coverage.

⁵⁹ The reference was made to the CC by the OFT in June 2013. The Government announced its intention to introduce a price cap, which was to be in place no later than 2 January 2015. The obligation on the FCA was introduced by Section 137C(1A) of FSMA, inserted by s131 Financial Services (Banking Reform) Act 2013. The Final Report of the Investigation was published in February 2015.

⁶⁰ The discussion of this aspect of the remedy design is set out in paragraphs 9.106 to 9.128 of the [final report](#). Views of parties are set out in [Appendix 9.2](#).

6. Merger control

6.1. Introduction

112. As described above, the UK operates a competition concurrency regime that covers both competition enforcement and markets work. However, no concurrency regime exists for merger regulation.

113. Merger control in the UK is primarily the responsibility of the CMA which reviews qualifying mergers regardless of the economic sector involved.⁶¹ The UK financial regulators have no official role but can be involved informally or as third parties at various points throughout the process.

6.2. The UK merger regime

114. The CMA can review a merger (including joint ventures and acquisitions) where:

- Two or more enterprises cease to be distinct; and
- Either the UK turnover of the acquired enterprise exceeds £70 million; or
- The two enterprises supply or acquire at least 25 per cent of the same goods or services supplied in the UK (or a substantial part of it) and the merger increases that share of supply.

115. Mergers in the UK are reviewed in two phases. Phase 1 is a lighter touch review, with an assessment to see if there is a “reasonable belief” that the merger has resulted or will result in a substantial lessening of competition. If there is a reasonable belief, the merger will be referred for a more in-depth review (‘Phase 2’) where the CMA will look to see whether substantial lessening is likely on “the balance of probabilities”.⁶² If the CMA has found cause for a reference to Phase 2, the parties will have the opportunity to offer undertakings to avoid further scrutiny.⁶³

116. The UK operates a voluntary merger notification system. As such, businesses may or may not choose to formally notify a merger to the CMA. However, the CMA is able to review mergers that have not been notified, where it believes a merger might harm competition (and meets the jurisdiction thresholds).⁶⁴ To facilitate this, the CMA has a Mergers Intelligence Unit (MIU), which looks for mergers that have not been notified but which might be candidates for review.

⁶¹ The relevant Secretary of State may intervene if the merger affects national security, media plurality, or the stability of the financial system, while the European Commission is currently responsible for mergers with EU and global turnover above a certain size.

⁶² The Phase 1 investigation has a statutory deadline of 40 working days from notification. The Phase 2 investigation has a statutory deadline of 24 weeks from reference (both deadlines can be extended in certain circumstances).

⁶³ Undertakings can be structural or behavioural, although the CMA is unlikely to accept anything other than a clear cut structural remedy at Phase 1 to avoid a reference.

⁶⁴ The CMA can only bring in mergers if they have taken place not more than four months before the day the reference is made, unless the merger took place without having been made public and without the CMA being informed of it (in which case the four-month period starts from the earlier of the time the merger was made public or the time the CMA was told about it – the CMA is therefore able to review completed mergers).

6.3. Public interest mergers and the introduction of the financial stability consideration

117. Section 42 of EA02 provides that the Secretary of State may issue a Public Interest Intervention Notice (PIIN) in the case of mergers that meet the jurisdictional thresholds, that the CMA has not referred for a Phase 2 investigation and which meet the following public interest considerations: national security (including public security); plurality and other considerations relating to newspapers and other media; and the stability of the UK financial system.⁶⁵ If a PIIN is issued, then the assessment of the merger will include consideration of its impact on the specified public interest consideration.

118. In such cases, the CMA is responsible for the overall assessment and for the final decision on any competition aspects of the merger. However, responsibility for making the final decision in relation to the specified public interest in both Phase 1 and Phase 2 lies with the Secretary of State, and this can overrule any competition issues identified by the CMA.

119. The EA02 allows the Secretary of State to create additional public interest considerations where it is felt necessary, following approval by Parliament. The financial stability public interest consideration was introduced specifically in the context of the 2008 financial crisis (the other two public interest considerations having been part of the original 2002 Act).

120. The Secretary of State felt compelled to introduce the financial stability public interest consideration in light of concerns regarding Halifax bank of Scotland plc (HBOS) which arose following the collapse of Lehman Brothers in 2008. At the time, HBOS was the UK's largest mortgage lender in 2008 and one of the largest current account providers. Following the Lehman Brothers collapse, concerns grew over the exposure of HBOS to the UK housing market, and in particular that it appeared to be struggling to secure the funding needed to cover operation for the following 12 months. Following severe slides in HBOS shares, the government brokered a deal for Lloyds TSB plc to take over HBOS, which would create the largest bank in the UK.⁶⁶

121. The Government believed that the merger was required to prevent the collapse of HBOS, which had the potential to spread to other parts of the financial system. Consequently, the Government felt that it needed to ensure that any assessment of the merger considered the overall financial stability of the UK, as well as the effects on competition.⁶⁷ As such, it introduced a new public interest consideration for the review of the merger, which remains in force.

⁶⁵ A Special Public Interest Intervention Notice can be issued in limited circumstances (relating to the defence industry and to mergers involving newspapers and broadcasting) where a merger does not meet the general jurisdictional requirements but where the public interest consideration is relevant. Currently, a European Intervention Notice can be issued in the case of mergers otherwise coming under EU jurisdiction but where the public consideration is relevant (in such cases, the EU carries out the competition assessment and decision, but the UK authorities carry out the public interest assessment, with the final decision by the Secretary of State).

⁶⁶ "The Lloyds-TSB and HBOS Merger: Competition Issues", House of Commons Library, 15 December 2008, <http://researchbriefings.files.parliament.uk/documents/SN04907/SN04907.pdf>

⁶⁷ House of Lords Hansard, 16 October 2008, Columns 849-863

6.4. Involvement by financial regulators in merger reviews

122. There is no formal role in the merger review process for financial regulators and no set procedure for their involvement in any review carried out by the CMA. Their involvement is context specific and either when the CMA considers their input will have value (for example to provide expertise on financial regulation) or when they respond to consultations as third parties. We note here that where the Secretary of State has intervened on public interest grounds in the case of media mergers, at Phase 1 Ofcom (the communications regulator) carries out the assessment on the specified public interest concern, while the CMA carries out the assessment on jurisdiction and competition (if appropriate). The CMA carries out the assessment on all issues at Phase 2, should the Secretary of State decide on referral. However there is no such provision for financial regulators with respect to financial mergers where the Secretary of State has intervened, and the CMA carries out both Phase 1 and Phase 2 (if appropriate).

123. The first point of potential involvement for financial regulators is with the MIU. The MIU reviews trade press and other sources of information for details of mergers which have not been notified but which may nonetheless look like they might harm competition. On rare occasions, regulators may flag possible cases directly with the MIU. More regularly, the MIU may approach regulators regarding a merger to see if the regulator has any concerns before deciding whether or not to review the merger.

124. Once a merger is being reviewed by the CMA, financial regulators can be involved at any stage within the review process. We set out below some notable examples from the last ten years where the UK's financial regulators have provided input into the CMA's merger reviews.

6.5. Lloyds TSB plc (Lloyds)/HBOS plc (HBOS)⁶⁸

125. The OFT⁶⁹ investigated the anticipated acquisition by Lloyds of HBOS, which was the subject of a public interest intervention notice given by the Secretary of State on 18 September 2008 (see above). Lloyds and HBOS were UK-based financial services groups, overlapping in the supply of banking (personal and corporate) and insurance services.

126. During the Phase 1 inquiry, the OFT received submissions from the FSA, the Bank of England and HMT, at the time the three regulatory authorities responsible for the UK financial sector. All three authorities argued that the necessity of the merger on financial stability (public interest) grounds outweighed any potential competition concerns, and that the merger should not therefore be referred for a Phase 2 investigation.

127. The OFT considered that the benefits to financial stability did not outweigh the expected harm to competition arising from the merger, and recommended to the Secretary of State that the test for reference to Phase 2 was met on competition grounds. The Secretary of State nonetheless decided not to refer the merger and allowed it to proceed on the grounds that "having had regard in particular to the submissions made to the OFT

⁶⁸ [Lloyds TSB plc \(Lloyds\)/HBOS plc \(HBOS\)](#).

⁶⁹ The Office of Fair Trading was one of the predecessor bodies of the CMA. It was responsible for carrying out Phase 1 merger reviews. The Competition Commission was responsible for carrying out Phase 2 merger reviews. Both organisations ceased to exist from 1 October 2013 when they were merged to form the CMA.

by the tripartite authorities (HMT, the FSA and the Bank of England), the Secretary of State considers that the merger will result in significant benefits to the public interest as it relates to ensuring the stability of the UK financial system and that these benefits outweigh the potential for the merger to result in the anti-competitive outcomes identified by the OFT.⁷⁰

6.6. Just Retirement Group plc/Partnership Assurance Group plc⁷¹

128. The CMA launched a Phase 1 merger inquiry in September 2015 into the anticipated merger between Just Retirement Group and Partnership Assurance Group. The companies overlapped in the supply of retirement income products to individuals, including annuities, care annuities, and equity release lifetime mortgages (LTMs), as well as in the supply of bulk annuity de-risking solutions to defined benefit pension schemes.

129. The review of the merger took place against a backdrop of significant regulatory change in the UK market for retirement income products. The CMA took the findings of the FCA's Thematic Review of Annuities and Retirement into account, and directly worked with the PRA to consider the potential impact of the implementation of the EU's Solvency II Directive (Solvency II). The CMA cleared the merger at phase 1.

6.7. MasterCard UK Holdco Ltd (Mastercard)/ VocaLink Holdings Ltd (Vocalink)⁷²

130. The CMA launched a Phase 1 investigation in October 2016 of the anticipated acquisition by MasterCard of VocaLink.⁷³ VocaLink was the incumbent provider of central infrastructure services to the UK's three major payment systems (BACs, LINK and FPS). MasterCard, a credit and debit card payments provider, had previously competed with VocaLink for the supply of these services.

131. At the time of the CMA's merger inquiry, the PSR was consulting on a package of remedies following a market study which found insufficient competition in the provision of central payment infrastructure services. The PSR found barriers to entry caused by a lack of competitive procurement and the use of bespoke messaging standards, and proposed mandating competitive procurement and the adoption of ISO 20022 messaging standards to address these. In particular though, the PSR found a reduction in the level of competition caused through the joint control held by the four largest VocaLink shareholder payment service providers (PSPs) over both the operators and VocaLink. As such, the PSR proposed that the four largest VocaLink shareholder PSPs should divest their interest in Vocalink. However, an acquisition of Vocalink by Mastercard could potentially make the divestment proposal redundant.

132. Consequently, the CMA worked closely with the PSR to ensure each agency understood the likely direction of the other's work and to share information gathered in

⁷⁰ [Decision by the Secretary of State not to refer to the Competition Commission the merger between Lloyds TSB Group and HBOS.](#)

⁷¹ [Just Retirement Group plc/Partnership Assurance Group plc.](#)

⁷² [MasterCard UK Holdco Ltd \(Mastercard\)/ VocaLink Holdings Ltd \(Vocalink\).](#)

⁷³ The European Commission decided to refer the case to the United Kingdom (UK) under Article 4(4) of the EC Merge Regulation.

their respective investigations (including the provision of evidence from the PSR regarding the technical operation of the relevant schemes).

133. The CMA found that the merger would be likely to result in a substantial lessening of competition, and the parties proposed undertakings in lieu of a Phase 2 reference. The PSR assisted the CMA's assessment of the proposed undertakings, and the Bank of England advised on possible limitations in relation to the companies listed by VocaLink as potential buyers. These factors were important to the CMA's decision to accept undertakings with non-structural elements in phase 1 – the CMA attached significant weight to the fact that the parties operated in a regulated sector, being able to rely on the PSR's assistance with the monitoring of the undertakings.

134. The PSR was satisfied that the acquisition addressed the competition concerns around ownership originally identified (see paragraph 131 above) as it removed the four largest shareholders' control and reduced the level of their ownership such that it would no longer discourage entry or incentivise them to protect Vocalink from competition. The PSR therefore only implemented the requirements to carry out competitive procurement and apply ISO 20022 standards.

6.8. Standard Life plc (Standard Life)/Aberdeen Asset Management plc (Aberdeen)⁷⁴

135. The CMA launched a Phase 1 review of the anticipated acquisition of Aberdeen by Standard Life in May 2017. The parties overlapped in the supply of active asset management services and in the supply of business-to-business platform services (adviser platforms) in the UK (and elsewhere).

136. The CMA engaged with the FCA throughout the Phase 1 assessment, in particular to check whether the shares of supply in the asset management market submitted by the parties were broadly consistent with the FCA's view of the market and to discuss the impact of the merger on the market for adviser platforms. This information allowed the CMA to clear the merger at Phase 1, in particular helping the CMA conclude that the merging parties' minimal shares of supply in asset management were not indicative of competition concerns resulting from the merger.

6.9. Intercontinental Exchange, Inc. (ICE)/ Trayport, Inc. and GFI TP Ltd (Trayport)⁷⁵

137. The completed acquisition of Trayport by ICE was referred for a Phase 2 investigation in May 2016. ICE operates exchanges and clearinghouses in the trading of wholesale European utilities, while Trayport's software products underpinned around 85% of European utilities trading.

138. During its Phase 2 assessment, the CMA liaised with the FCA to assist its understanding of the products (contracts) traded and the regulatory landscape, and to test its understanding of the parties' arguments. In particular, the FCA provided information on the impact of MiFID II, EMIR and the REMIT carve-out and how these would affect European utilities trading and competition between brokers and exchanges.

⁷⁴ [Standard Life plc \(Standard Life\)/Aberdeen Asset Management plc \(Aberdeen\)](#).

⁷⁵ [Intercontinental Exchange, Inc. \(ICE\)/ Trayport, Inc. and GFI TP Ltd \(Trayport\)](#).

139. The CMA concluded that the merger had resulted in a substantial lessening of competition and required ICE to sell Trayport.

7. Consumer work

140. The CMA and the FCA share powers under Part 8 of EA02 and under the Consumer Rights Act 2015 in relation to unfair contract terms. These include information gathering powers, as well as the ability to apply for court orders and accept undertakings in lieu of action. The FCA is required to consult the CMA before taking certain actions under Part 8 and the CMA retains the technical ability to intervene in order to direct which enforcer is to act, though it is yet to use this power.

141. The CMA and the FCA both participate in several groups in relation to their concurrent consumer powers. This includes the Consumer Protection Partnership (CPP), the Consumer Concurrency Group (CCG) and the set of consumer enforcement bodies for the European Union's Consumer Protection Co-operation Regulation (CPC).

142. More information on these interactions can be found in the CMA-FCA consumer MoU⁷⁶ and in the CMA's guide to its Consumer powers, CMA58.⁷⁷ The MoU commits both organisations to collaborative working, information exchange and mutual consultation in areas of shared interest and competence, for example:

24. Where the firm concerned is not a firm with a relevant permission, the CMA may consider fairness:

(a) under the CRA in respect of financial services contracts and consumer notices; and/or (b) under the CPRs in respect of financial services.

25. The CMA may consider fairness, but will not usually expect to do so, where the firm concerned is an authorised firm, or an appointed representative under FSMA.

26. The authority to which the complaint has been referred will consider who is best placed to review the matter. In doing so consideration will be given to matters such as which authority is responsible for most of the contract, or the particular focus of the term or practice complained about, and whether either authority is already considering the same or similar issues. The CMA will normally consider that the FCA is best placed to deal with matter where the firm concerned is an authorised firm, or an appointed representative under FSMA.

27. If the FCA considers that the CMA is better placed to deal with the matter, it will pass the case to the CMA for it to decide whether, in its view, action by the CMA is required and, if so, what action is appropriate. If the CMA considers the FCA is better placed to deal with the matter, the CMA will act reciprocally.

143. The guide to the CMA's consumer powers contextualises and explains the CMA's functions and includes some general text on consumer concurrency:

⁷⁶ [MoU between CMA and FCA.](#)

⁷⁷ [Consumer protection: enforcement guidance \(CMA58\)](#), 17 August 2016.

11. As well as the consumer enforcement powers shared with TSS, the CMA shares consumer functions with a range of other agencies. The majority of these are public authorities discharging regulatory responsibilities for particular economic sectors. Others (the ASA and PhonePayPlus) are self-regulatory agencies or (in the case of Which?) enjoy charitable status, and have more limited enforcement powers. The CMA views working closely with all these concurrent enforcers as important in order to avoid duplication in effort and instead to maximise the impact of interventions for consumers.

12. Through the Consumer Concurrences Group (CCG), the CMA and other regulators aim to improve clarity and share best practice on overlapping areas of responsibility, such as unfair terms legislation, especially in relation to enforcement. For practical purposes the CCG meets together with the Consumer Enforcement Forum of Competent Authorities.

144. The CCG meetings also include discussions relating to the European Union's Consumer Protection Co-operation Regulation.⁷⁸ The CMA is the UK's Single Liaison Office, acting as a referral point between the UK and other EU Member States for information and enforcement requests. The FCA is a Competent Authority for the purposes of the Regulation.

145. As part of the CPC network of enforcers, both the CMA and the FCA have participated in the European Unfair Terms Strategy project, run from 2013-16 and project managed by the CMA in the first two years. This included discussions in Malta between 15 different agencies from 13 Member States on approaches to financial services products and unfair contract terms. Year three, managed by the European Commission, included a workshop in Stockholm specifically focused on unfair contract terms in financial services that involved both the CMA and the FCA.

146. The CMA worked closely with the FCA and some trade associations in the financial services sector around the production of CMA37⁷⁹ Guidance on unfair contract terms in relation to changes found in the Consumer Rights Act 2015.⁸⁰ The CMA continues to have discussions with the FCA in that area, given that duties to notify exist in relation to the consideration of complaints and the obtaining of enforcement outcomes – more details can be found in the Act and the Guidance.

147. Historically, the CMA's predecessor, the OFT, also co-operated closely with the FCA's predecessor, the FSA, on matters relating to Consumer Credit, as the OFT was the licensing authority. Responsibility for Consumer Credit licensing and enforcement moved to the FCA in 2014 – more details can be found in CMA58 where more information can be found on consumer powers more generally.

⁷⁸ http://ec.europa.eu/consumers/enforcement/cross-border_enforcement_cooperation/index_en.htm

⁷⁹ [Unfair contract terms guidance \(CMA37\)](#), 31 July 2015.

⁸⁰ [Consumer Rights Act 2015](#).

ANNEX 1: Financial Conduct Authority's submission

Could you briefly describe specific instances since 2008 when you have considered or proposed measures to improve transparency in the financial sector, and the way in which you interacted with the competition authority when formulating or considering these proposals?

The FCA has a strategic objective to ensure that the markets we regulate⁸¹ function 'well'. Promoting competition in the interests of consumers is also one of our three operational objectives, alongside protecting consumers and maintaining the integrity of the financial system. We also have an overall duty to promote effective competition in the interests of consumers, so far as is compatible with meeting our operational objectives. We can investigate markets where competition may not be working well for consumers, and intervene where appropriate, for example, by making rules. This means that promoting competition is central to the way we operate.

Since 2015, we have also had concurrent competition powers with the Competition and Markets Authority (CMA). This allows us to investigate and enforce using UK competition law in financial services beyond the firms that we regulate. These powers strengthen our ability to ensure competitive markets that deliver good consumer outcomes.

We work with the CMA in a variety of different ways. Only one authority can formally investigate or take enforcement action on a specific case at any one time. We discuss with the CMA who is best placed to do so. This means that we sometimes lead on investigations. We also work with the CMA in areas such as remedy implementation, with the retail banking market remedies being an example. Furthermore, we can refer a market to the CMA for further investigation, as we did the investment consultancy market.

Transparency remedies

We detail below instances in which we have used our powers to consider or propose measures to improve transparency for consumers in the financial sector. Whilst transparency plays an important role in delivering consumer benefits, we also consider other pro-competition measures that enable or strengthen market access, such as the New Bank Start-Up Unit which we jointly established with the Prudential Regulation Authority, and facilitate consumer choice, such as requiring general insurance providers to publish details of last year's premium on renewal notices.

Retail banking market remedies

The retail banking market investigation follows the CMA's investigation into retail banking but has a broader scope. We are looking in particular at service quality, prompts and alerts and overdraft measures. We engage regularly with the CMA about our work in this area. We published a consultation on additional service metrics (in addition to the CMA's core service indicators) in July 2017. The CMA core service indicators require larger banks and building societies to publish details on whether personal customer or small businesses are willing to recommend their bank to friends, family and colleagues.

⁸¹ Those markets are the financial markets, regulated financial services, and services provided by non-authorised individuals carrying out regulated activities

We have proposed additional metrics in four key areas, which includes time taken to resolve issues, major service outages, service availability and account opening. We proposed that firms will publish these metrics at the same time as they publish the CMA's core indicators, starting in August 2018. We will publish a Policy Statement with final rules in December 2017.

We are doing research to design and implement prompts and alerts to encourage consumers to consider their banking arrangements and to increase transparency around the cost of current accounts, including any fees and charges. We have undertaken wide ranging research to inform a series of pilots and randomised control trials (RCTs) that will take place later this year and into 2018.

We will also review the CMA's Monthly Maximum Charge (MMC), introduced in August 2017. Firms must set and publicise the MMC that consumers could incur by using an unarranged overdraft. The aim of the MMC is to increase transparency about overdraft charges and to limit the costs heavy users pay. We will review the effectiveness of the MMC and consider whether additional measures are required to increase its effectiveness.

Digital comparison tools

We worked closely with the CMA on its market study into digital comparison tools. The CMA's final report was published on 26 September 2017. It made recommendations to regulators, including the FCA, aimed at ensuring consumers can make easy and accurate comparisons between providers. We share the aspiration to ensure DCTs deliver good outcomes for consumers and so we are actively considering what action to take in response to the CMA's recommendations.

Asset Management

In the Asset Management Market Study Interim Report, we expressed concern that fund management charges might not always be visible to investors, and that investors might not pay sufficient attention to charges or understand what they represent. Charges can also be difficult for investors to understand, particularly when they are expressed in percentage, rather than monetary, terms.

In the final report, we proposed a range of remedies, including those which aimed at increasing the transparency of costs and charges. This would improve objectives so that investors can better understand what their fund is trying to achieve, and monitor performance against any targets. Upcoming MiFID II regulation proposes the introduction of the disclosure of a single all-in fee to investors using intermediaries. This will include the asset management charge, an estimate of transaction costs and any intermediary fees. We think that the way in which this information is presented to investors will have an impact on how this is used. Therefore, we are testing ways to improve the effectiveness of any forthcoming disclosure. We are doing so, in order to understand the role of the prominence and formatting of charges information, in encouraging investors to focus on the impact charges have on their investments and enabling effective price comparison.

We also support consistent and standardised disclosure of costs and charges to institutional investors. Templates used by investment firms should be free of jargon and easy to understand. We consider that the purpose of a standardised disclosure template would be to provide institutional investors with a clear understanding of the costs and charges for a given fund or mandate. As part of our package of remedies, we

recommended that both industry and investor representatives agree a standardised template of costs and charges. We also asked an independent person to convene a group of industry and investor representatives to develop this further. We will work with these stakeholders to consider whether any other actions are necessary to ensure that any templates meet the needs of institutional investors and address our concerns. As part of our Asset Management Market Study we also made a Market Investigation Reference (MIR) to the CMA in relation to investment consultancy and fiduciary management services. We considered that certain features of this market such as high levels of concentration, barriers to entry and potential conflicts of interests could restrict competition. We therefore used our powers to refer this market to the CMA for further investigation.

Cash savings

In our cash savings market study we found that accounts that were opened a long time ago pay lower interest rates than those opened more recently. Despite this, a significant number of consumers do not move their money to accounts that pay more interest - even with the same provider.

We asked a sample of around 30 firms to tell us the lowest possible rate that customers could earn across all of their easy access cash savings accounts and easy access cash ISAs. We collated this information and published it (the first occasion was December 2015) to help raise awareness of firms' strategies towards their longstanding customers.

The information revealed differences in the rates firms have on offer on accounts. While we recognise that firms offer a range of accounts, and the lowest rate that a customer could earn is only one part of a bigger picture of firms' treatment of their customers, this does show that some consumers could be better off by choosing a different account.

We called this publication the 'sunlight' remedy because it shines a light on interest rates that are not prominently displayed, but that may be earned by many customers. These customers stand to lose out by not switching to a different account.

As a financial services regulator with a competition objective and duty, we did not liaise directly with the competition authority, though they were kept up-to date with developments. But we did carefully consider the impact of the proposal on competition, in particular, the risk of unintended consequences, such as the relative impact on those firms included in the sample and those not and the risk of greater transparency dampening competition rather than enhancing it.

ANNEX 2: Payment System Regulator's submission

The Payment Systems Regulator (PSR) became fully operational on 1 April 2015. The PSR is an independent economic regulator focused on payments systems whose objectives and statutory functions are focused on competition and innovation.

The PSR has three statutory objectives. These are:

1. to promote effective competition in the markets for payment systems and for services provided by those systems;
2. to promote [the development of and] innovation in payment systems; and
3. to ensure that payment systems are operated and developed in a way that considers and promotes the interests of service-users.

The PSR's aim is to ensure payment systems and the regulatory framework operate in the best interests of service-users and the wider UK economy – promoting rather than constraining innovation and competition.

The PSR regulates those payment systems designated by HM Treasury. These are the largest and most important payment systems which, if they were to fail or to be disrupted, would cause serious consequences for their users. The eight payment systems currently designated are: Bacs, CHAPS, Faster Payments Scheme (FPS), LINK, Cheque & Credit, Northern Ireland Cheque Clearing, Visa Europe and MasterCard. For each designated system, all participants (operators, payment service providers (PSPs) and infrastructure providers) in that payment system fall under the PSR's remit.

Under the Financial Services (Banking Reform) Act 2013 (FSBRA), the PSR has a range of powers to support its functions. In addition the PSR has functions in relation to EU initiatives in the financial sector, namely the monitoring and enforcement of the Interchange Fee Regulation (IFR), designation of alternative switching schemes under the Payment Accounts Directive (PAD) and monitoring and enforcement of access provisions under the Revised Payment Services Directive (PSD2)

Additionally, the PSR has concurrent competition powers under the Enterprise Act 2002 and the Competition Act 1998. These apply wherever there are issues relating to participation in payment systems.

Significant policy developments relating to work of the Payment Systems Regulator

Market Reviews

The PSR has conducted two studies focused on competition:

I) Infrastructure Market Review (IMR) – the PSR considered the ownership and competitiveness of the infrastructure supporting the Bacs, FPS and LINK payment systems and published its final report of its findings in July 2016.⁸² The IMR report concluded that competition in the provision of central infrastructure is not effective. Two remedies have been implemented:

⁸² Available at <https://www.psr.org.uk/psr-publications/market-reviews/MR1523-final-report-infrastructure-provision>.

1. mandating competitive procurement exercises for Bacs, FPS and LINK when the operators of these systems purchase central infrastructure services;
2. introducing ISO 20022 messaging standards in future procurement exercises for Bacs and FPS;
3. A third remedy had been proposed (divestment by the four largest VocaLink shareholder PSPs of their interest in VocaLink). This remedy was not pursued, given the Mastercard acquisition of Vocalink, which currently supplies the central infrastructure for all three systems. The PSR considered that the acquisition is effective in addressing the ownership-related competition problems identified.⁸³

The PSR remedies were designed to remove barriers and create a competitive procurement process, opening up the provision of central infrastructure to competition. The remedies would also enable new infrastructure providers with different technology to enter the market and drive new and innovative products and services. This could benefit all users of payment systems, from large PSPs to consumers.

II) Indirect Access Market Review (IAMR) – the PSR assessed the supply of indirect access to payment systems. In its published report in July 2016, the PSR concluded that, although competition in the supply of indirect access appeared to be producing some good outcomes, it had specific concerns about the quality of access, limited choice for some PSPs, and barriers to switching.⁸⁴ However, the PSR identified a number of recent and current developments such as potential market entry and improved technical solutions for access which, combined with the PSR’s programme of work on access, the PSR considered are likely to address these concerns.

The PSR has seen progress in relation to access issues discussed in the IAMR. For example, the Bank of England has announced that it will be extending settlement account access to non-bank PSPs and FPS has announced that five companies are now accredited with providing direct technical access to FPS, both of which provide more options for PSPs to have direct technical access. The PSR has powers to require certain payment system operators to provide direct access and certain direct payment service providers to provide indirect access to other PSPs. The PSR is considering one application for such access.

Payments Forum and innovation

The PSR set up the Payments Strategy Forum (the Forum) in 2015 as a major initiative to promote innovation in payments where collaboration is needed. The Forum is a collaborative body made up of experts from across the payments industry and representatives of those who use payment systems, such as consumers, retailers and the government. We gave it the task of developing a strategy for collaborative innovation in payments within 12 months of its first meeting. The PSR supported the work of the Forum, ensuring appropriate pace and direction and providing secretariat support to the Forum and the Chair. The PSR also maintains a wider group of stakeholders, the Payments Community, to help guide the Forum’s work.

⁸³ See paragraphs 130-134 above.

⁸⁴ Available at <https://www.psr.org.uk/psr-publications/market-reviews/MR1513-final-report-supply-of-indirect-access-payment-systems>.

In November 2016 the Forum delivered its Strategy, outlining a set of collaborative proposals to meet the user needs it had identified. It aimed to:

- create easier access to the current payment systems, fostering more competition and enabling innovation
- deliver a payment system that is simpler, more agile and responsive to the changing needs of users
- introduce measures to reduce the weaknesses in current payment systems that are exploited for financial crime

148. Its specific proposals included consolidating the governance of the operators of three payment systems: Bacs, FPS, and Cheque and Credit Clearing. Clearance for the merger was granted by the CMA in summer 2017 and the transaction is expected to be complete around the end of the year. The Forum also proposed a new payments architecture (NPA), an industry-led initiative to simplify the way payment systems operate so they can interact with different participants more easily and more aspects of what payments systems do are open to competition. Cost and complexity will be reduced, so that more providers can plug into the systems to offer competitive and innovative services.

Payments Data

The PSR is conducting work into the increasing availability and commercial use of data within the UK payments industry and considering the potential impact of those issues on the industry and the PSR's statutory objectives (competition, innovation and promoting the interests of end users).enable us to better understand this dynamic and evolving area. The PSR is considering, amongst other things, the changes that are being driven by forthcoming regulatory and industry initiatives (such as PSD2, open banking and the GDPR) and the likely increase in the number and diversity of participants in the payments industry.

Contactless Mobile Payments

The rapid growth in mobile payments in the UK also could affect all three of the PSR's statutory objectives, leading to work being undertaken in this area to review these developments. The PSR issued information requests to a wide number of participants in the contactless mobile payments sector and reviewing the responses and analysing the information collected. The PSR aims to publish a progress update on its work in this area in 2017.

ANNEX 3: Prudential Regulation Authority's submission

The Financial Services and Markets Act 2000 as amended placed a duty on the PRA to 'have regard' to a number of regulatory principles, in addition to its safety and soundness, and policyholder protection objectives. These regulatory principles included 'the need to minimise any adverse effect on competition in the relevant markets that may result from the manner in which the PRA discharges [its] functions'. In essence, this regulatory principle sought to ensure that competition considerations were at least a factor the PRA should consider when taking actions to meet its primary objectives.

Subsequent to the adoption of the Financial Services Act 2012, a Parliamentary Commission on Banking Standards (PCBS) was established in 2012 to conduct an inquiry into professional standards and culture in the UK banking sector and to make recommendations for legislative and other actions. One of its recommendations argued for greater weight to be placed on competition considerations by the PRA, with the addition of a secondary competition objective. In 2013, the Government agreed with the PCBS's recommendation and introduced the secondary competition objective (SCO).

The PRA's secondary objective to facilitate effective competition relates to markets for services provided by PRA-authorized persons in carrying out regulated activities. These are markets in which PRA-authorized firms, including branches located in the United Kingdom, supply regulated services. They may be local, national, or international in nature. For instance, the reinsurance market tends to be considered international in scope, with UK-based reinsurers supplying customers in other countries and *vice versa*, while life insurance tends to be considered a national market. Similarly, the market for the provision of corporate and investment banking services to large corporations tend to be global in nature, whereas the geographical scope of retail banking activities is typically aligned with national boundaries.

The PRA is not responsible for enforcing competition law, and therefore does not have associated competition powers. The PRA consults with the Financial Conduct Authority (FCA) and Payment Systems Regulator (PSR) *where* its policymaking is expected to be of material interest to one or both of them, and *vice versa*. This could include the competition implications of new policy. The PRA also interacts with the Competition and Markets Authority (CMA), the FCA and PSR on competition matters in relation to their market studies and market investigations; where, for example, the PRA may be requested to supply information about the prudential regulatory regime.

In 2016, the PRA undertook research to understand the impact of internal ratings based (IRB) models on the pricing of mortgages. This research was used by the CMA in its market investigation into retail banking in the UK to explore their concerns that 'the disparity on mortgage risk weightings has the potential to distort competition and act as a barrier to entry and expansion for smaller banks in retail banking'.

The CMA concluded its retail banking market inquiry in August 2016. The CMA confirmed the provisional finding that prudential rules do not give rise to an adverse effect on competition. The CMA also called on both HM Treasury and the PRA to give due consideration to competition when developing and negotiating policies.

The PRA has continued to exercise its influence internationally to progress effective competition through the proportionate design of regulations. In line with the expectations of the CMA, the PRA argued for a significant lowering of the standardised risk weight for

low loan to value (LTV) mortgages when negotiating revisions to the SA for credit risk being considered by the Basel Committee on Banking Supervision (BCBS).

For more detailed information on the PRA's approach to its SCO, please see:

- Q4-15 Quarterly Bulletin article on the PRA's approach to its secondary competition objective, available at <http://www.bankofengland.co.uk/publications/Documents/quarterlybulletin/2015/q402.pdf>;
- 2016 Annual Competition Report, available at <http://www.bankofengland.co.uk/publications/Documents/annualreport/2016/compreport.pdf>; and
- 2017 Annual Competition Report, available at <http://www.bankofengland.co.uk/publications/Documents/annualreport/2017/compreport.pdf>.