

Working with Ofwat and other regulators to drive concurrency

Concurrency - background

- Competition Act 1998 conferred on most regulators the power to apply competition law in their sectors
- But Government concern that competition law not used enough in regulated sectors: ***‘few CA98 cases or MIRs in the regulated sectors’*** (BIS policy paper, March 2012)
- ERRA13* created **enhanced concurrency regime**
 - Enhanced cooperation (see slide 4)
 - Established the **primacy rule** for regulators: before taking direct regulatory enforcement, consider whether Competition Act 1998 enforcement ‘more appropriate’

The new approach in practice

- Promoting competition
 - CMA statutory duty to ‘promote competition... for the benefit of consumers’
 - Government ‘steer’ to CMA, December 2015: ‘a strong dialogue with sectoral regulators using the UKCN to ensure that the overall competition regime is coordinated and regulatory practices complement each other’
 - Regulators’ duties to promote competition
- Putting in place the building blocks
 - formal issuance of concurrency regulations (Competition Act 1998 (Concurrency) Regulations 2014)
 - CMA guidance on the operation of the new arrangements
 - formation of the UK Competition Network
 - Sector Regulation Unit established within the CMA

CMA's work with the regulators

- 'Concurrency' arrangements with regulators
 - memoranda of understanding agreed with all regulators including Ofwat
 - pragmatic approach to case allocation between CMA and regulators
 - information sharing
 - input into competition guidance including new Ofwat CA98 guidance
- Facilitating joint work with regulators
 - sharing know-how and best practice (eg roundtable on commitments)
 - providing support on cases (eg Ofwat decision in Anglian Water)
 - Secondments (eg to provide know-how ahead of market opening)
 - working with regulators to develop pipeline of cases
- Policy projects
 - mutual support between the CMA and the relevant regulators on policy work aimed at achieving more competitive outcomes in regulated sectors (e.g. engagement on water market opening preparatory work)