

# 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)