Joint Regulators Group (JRG)

Building Confidence that Consumers in Regulated Sectors are Effectively Protected from Competition Failures

Concurrent enforcement with the Competition and Markets Authority

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Progress report of the Joint Regulators Group Work-Group on Concurrency to the May JRG meeting

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Introduction

1) The Enterprise and Regulatory Reform Act 2013 ("the ERR Act") will, among other things, create a new competition authority, the Competition and Markets Authority (CMA), and will enhance checks-and-balances to ensure that concurrency operates well in order to promote competition to the benefit of consumers.
2) The concurrent regulators welcome the creation of the CMA and share with the new CMA leadership the aim to ensure that we all work in partnership to deliver high standards of consumer protection and to act against anti-competitive behaviour. The regulators (under the aegis of the Joint Regulators Group or JRG) have worked with the CMA transition team and colleagues from the Department for Business (BIS) and the Office of Fair Trading (OFT) to consider in more detail how operational relationships can be optimised.
3) The JRG work group has so far met for two workshops, as well as collaborating by email in development of this progress report. Its Terms of Reference are annexed to this report. After comments from the May JRG, and further work, it is planned to produce a final report in the autumn of 2013 (to the September or December JRG meetings). It is anticipated that much of the product of the group will also be incorporated into a joint CMA-JRG Regulatory Relationships Strategy Paper, and will form the basis for Memoranda of Understanding between the CMA and each concurrent regulator.
4) This document reports on progress so far on this work, as well as setting out directions for future consideration. Its reader needs to bear in mind that the JRG work-group is not intended to be the sole or even the main vehicle for consultation on development of the new regime; in particular:
    a) BIS is leading developing of the secondary legislation which will complete the legal framework. While the work-group discussed what the SI needed to cover and how it fitted with the overall architecture, detailed consultation on this has been taken forward mainly through BIS' usual channels;
    b) It is expected that a similar approach will be taken to development of the formal Guidance on the operation of concurrency (being developed by the OFT); and
    c) Bilateral contacts between stakeholders have continued to play an important role.

Our shared vision

5) Each of the concurrent regulators exists to promote the interests of the consumer, and this is also at the heart of the new CMA's mission.
6) The concurrent regulators recognise the real opportunities, through this enhanced regime, to develop good working relationships and bring together the CMA's competition and consumer expertise and the sector expertise of the concurrent regulators.
7) Competition is the best way to protect consumers, where it can be achieved[1]. The concurrent regulators are committed to promoting competition[2], using the full range of their powers (*ex post* and *ex ante*). It is recognised that some markets are structurally uncompetitive, and *ex ante* rules may continue to be necessary for these. However, economic regulators have a strong track-record of driving structural reform and look to enable competition wherever possible. [3]
8) The concurrent regulators are committed to enforcing competition law and to making market investigation references. Having these tools alongside *ex ante* regulation enables the most flexible and effective intervention to protect competition and consumers. Wherever enforcement of competition law is the most appropriate approach, it will be deployed.
9) We are enthusiastic about the enhancements to how concurrency operates that will flow from the ERR Act. We see an opportunity to enhance further the bite and range of pro-competition interventions, as well as producing speedier and more effective remedies, using our resources more efficiently.
10) In particular, we look for concurrency to operate in future on a more collaborative basis. Such an approach can make for better and speedier enforcement, which is good both for consumers and for regulated businesses. It can also enable the most efficient deployment of scarce and expensive human resources, reducing the need for a series of relatively small organisations to maintain standing capabilities. This should also make the concurrent regulators even more attractive places for competition specialists to work.
11) It is important that consumers know about work on their behalf and are informed about the benefits of competition and markets, and about how they can act as empowered consumers within competitive markets. So transparency and competition advocacy are important parts of the concurrency regime. The Act offers opportunities to develop transparency further, and hence maintain confidence in competition law and *ex ante* regulation working effectively together.

Ingredients for success

12) To deliver this vision, we see four key ingredients.
13) *Transparency and assurance.* Despite some concerns that insufficient use has been made of competition law, Government has decided that concurrency should continue. In order to build support for and maintain the stability of these legal arrangements, it is important that they operate in a way that:

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[1] Some economic regulators also have safety responsibilities that might not be best achieved through the promotion of competition.

[2] Monitor does not have a duty to promote competition. Monitor's main duty is to promote and protect the interests of patients. Monitor must exercise its functions with a view to preventing anti-competitive behaviour in the provision of health care services for the purposes of the NHS which is against the interests of people who use such services.

[3] Monitor will look to 'enable competition' (meaning, in this context, to act to prevent anti-competitive behaviour) where this is in patients' interests.

a) Is transparent, in the sense that stakeholders can understand where the regulators and CMA see competition problems emerging or likely to emerge, and can understand the rationale for the selected course of action; and
b) Is quickly and effectively responsive to problems as they emerge, even when such problems are in the context of established regulatory frameworks.

14) *Collaboration* is a key watchword. This will require strategic dialogue between the CMA and regulatory heads to recognise the need to work in partnership in order to give full effect to the enhanced cooperation brought about by these reforms. Allocation of cases will continue to matter, since it may make a difference to how effectively competition law enforcement is meshed with ex ante regulation. However, collaboration will play a more important role, to make sure that full account is taken of industry context and to ensure that - between the regulators and the CMA – the right resources are being deployed to tackle emerging issues. Clarity about who is accountable for taking decisions will remain important, but the case put to decision-makers should take account of the best wisdom available across the concurrent community.
15) *Pragmatism.* The legal framework post-ERR already contains the main provisions necessary for such collaboration; and secondary legislation can sketch in more detail where appropriate. However, the main focus to set the new concurrent regime off on a good footing has been on practical arrangements: staffing, cross-charging, information exchange, case management, governance, decision-making. We expect these will be captured in revised concurrency guidance and forthcoming memoranda of understanding (MOUs) between the CMA and the sectoral regulators.
16) *Flexibility.* The sectoral regulators vary greatly (e.g., in resources, conditions in the regulated market, degree of choice about regulatory instrument). Collaboration arrangements need to reflect this. In some areas (e.g., arrangements for staff sharing) it is more realistic to look to shorten a negotiation phase (by create a "menu" of options, each with pre-defined templates for legal and financial arrangements) than to create a standard model.
17) The following sections address key areas:
    a) Strategic dialogue and the sharing of best practice;
    b) The annual concurrency report
    c) Information exchange between enforcing authorities;
    d) Staffing and financing;
    e) Transparency and assurance.

Strategic dialogue and the sharing of best practice

18) The CMA will want to explore working with the sectoral regulators to give full effect to the new regime, and to meet the expectation that implementation of the new competition regime in the UK will make a difference. Building on existing cooperation and collaboration, there will be in effect a national cross-sectoral competition network comprising the CMA and sector regulators that will operate at a number of different levels. As part of this there will need to be appropriate strategic dialogue and regular meetings between the organisational heads in order to better understand key developments in each sector and to consider common challenges. In addition, at the working level there will be engagement on resource sharing and the sharing of best practice.

The Annual Concurrency Report

19) The ERR Act requires the CMA to prepare a report, after the end of each financial year, that assess how the concurrency arrangements have operated during the year. The CMA will want to engage with sectoral regulators on the annual concurrency report and as to the best way to set out issues arising in each sector..

Information exchange

20) As a starting point, enforcing authorities need to be able to exchange information and the ERR Act provides for enhanced information sharing.
21) This topic can be seen as having four layers:
    a) Why exchange information? What relationships are being enabled by exchanges?
    b) What processes support information exchange?
    c) What legal gateways are necessary to enable exchange?
    d) What IT is needed to support information exchange?

Why exchange information?

22) A number of reasons have been identified:

    a) Emerging problems will be handled best if concurrent regulators have good access to information about precedents, similar cases, experience with remedies and other cross-sectoral information.
    b) Information-sharing can provide assurance around the regime's effectiveness, by showing there are not lots of competition cases being missed. No regulator will want to be seen as the poorest-performing regulator in this respect, which creates an incentive to share.
    c) Effective information-sharing is essential to enable decision-making, e.g. sharing of Statement of Objections to facilitate discussions / input on correct approach.

23) These different goals may be best met in different ways. For instance, the best tool to enable high-level overview information on cases may well not be best for enabling detailed collaboration.

When should we share information?

24) It is not expected that secondary legislation will make detailed arrangements for information-sharing – the provisions would be too complex. So the SI should establish broad gateways and arrangements, perhaps indicating types of information to share.
25) We expect that the SI will indicate some points at which information-sharing is mandatory (e.g. when a case is opened, before a Statement of Objections, perhaps when a regulator takes a decision whether sectoral or competition powers are more appropriate). However, information

should be shared not only at those times, but more richly as part of an on-going dialogue about the state of competition in the sector.

26) It is up to the sectoral regulator to share proactively with the CMA when it sees cases that might raise competition problems. MOUs might be able to help in setting up a safe environment for initial conversations.
27) The CMA needs to give thought to what it will do with information that has been shared by a sectoral regulator. For communication relating to a formal step in an enforcement process (e.g., before a Statement of Objections), a stand-still period might be appropriate to give the CMA time to respond. (The EC precedent is 30 days for comment.)
28) Some shared membership of decision-making bodies and/or as Steering Groups might also help with transparency and information-sharing across regulators.
29) The ERR Bill gives the CMA a range of powers where it has concerns about the development of a case. In such a scenario, open information-sharing becomes all the more important. We suggest that the SI should make provision for an enhanced dialogue before the CMA exercises its powers to take over a case and to prevent a sectoral regulator using competition powers on a matter. MOUs should expand on the regime applicable in such a case, which should enable a full dialogue about how problems are understood, measures taken and foreseen, and concerns on both sides about possible courses of action.

How should we share information?

30) One possibility for sharing information is a web portal. However, this is not seen as a shared work-space, more for sharing relatively high-level information about cases. Nevertheless, to be useful the information would need to include topics like the companies involved, and a broad account of the allegations, and would therefore be commercially sensitive. Care would need to be taken with regards to confidentiality. A statutory prohibition on disclosure (as in the ECN) might well be needed.
31) More work is needed on confidentiality. We need to understand what sort of confidentiality would be at stake – is it that people cannot share some types of information, or they can but recipients cannot act upon it, or something else? It noted that the ECN can screen leniency applications from regimes with no leniency regime – that is, information can be limited in distribution to those who need it.
32) Even given limits to the information put up on a shared portal, there should be enough to encourage 1:1 discussions to find out more where there is a link.
33) More work is needed on the right format for sharing information – some kind of template is likely to be appropriate.

Areas for further work

How would prohibitions on disclosure work?

34) Disclosure only of benefit if the information can be used for a regulatory purpose (if it cannot be used then it is possibly worse than useless). That is likely to mean sharing some information in a reasonable amount of depth. The level of information needed is likely to be too much to put on a shared portal even if only on practical grounds – on any given investigation there may be several areas where precedent could be useful for another case (e.g., at an Ofgem level, a recent decision on a mis-selling investigation may have set a precedent on some penalty-related issues for future Ofgem cases, a fact which would not be obvious from the title of the investigation or

the subject matter). Do we need to consider sharing key themes or issues or precedents arising during or from cases so that other regulators can identify useful links?

35) The purpose of exchanging information is to facilitate a discussion about underlying competition problems in a market. Such a conversation needs to extend to how ex ante regulation may be relevant. It will therefore be important that regulators can talk freely to the CMA about regulatory matters. However, we are not clear yet whether this requires legal provision for a legal gateway.
36) Thought should also be given to access protocols to the portal.

What information to share at different stages?

37) We do not want to set up an onerous process. At the early stages, perhaps it would be enough just to set out the existence of an investigation and a brief description of the issue under investigation? In this case, we would need to work out what trigger points might lead to sharing further information.
38) We could possibly share "as we go along" - when a case raises an issue which the regulator thinks may be occurring elsewhere – thereby setting a trigger for another regulator to contact them if they are looking at the same issue.
39) There is a question as to what we mean by an "issue" – market definition is an issue, but is far too general to be of use in alerting people to an issue. The type of issue arising might need to be quite granular.
40) Some parts of lessons-learned exercises, after cases are completed, should be shared. However, are there risks in expecting that a complete lessons learned exercise would be shared? – Would that risk stifling robust internal debate, that people would not be comfortable sharing externally.

How share?

41) A web portal has been suggested. Some sort of electronic shared space would appear to be the easiest way of sharing while still protecting some fairly high-level but not public domain information.

Staffing and financing

42) It is expected that the secondment provisions in the Statutory Instrument (SI) will not be too prescriptive but will provide more than is currently contained in the concurrency regulations. The detail and how the arrangements will work will be set out in the MOUs.
43) In principle, the lead body of an investigation will be able to draw on resource from other regulators / CMA to:
    a) Provide resource to the case team
    b) Steer decision making
44) Decision making role will be set out in CMA Rules. There is a clear implication of strong engagement by and with concurrent regulators.

Secondment opportunities present real benefits in terms of resources, sharing of sector expertise and providing challenge.

Examples of effective collaboration

Ofwat/OFT sludge study

45) A significant piece of joint working between the OFT and Ofwat was a Market Study carried out from January 2011 – September 2011. This work was focused on the treatment of sewage sludge and other organic waste. The objective was to see whether the market is working effectively for consumers and what further action we might need to take to improve it. A key reason in undertaking this work in this way was that the objectives of the OFT and Ofwat were different but they were complementary.
    a) Two members of Ofwat's staff were seconded to the OFT for the duration of the study and made up half of the project team. They were based at the OFT offices and had access to an OFT email account.
    b) There were no formal terms of reference but expectations on resource commitment were agreed at the outset.
    c) The decision making authority was the OFT although the CEO from Ofwat attended the Board Meeting as an observer and to provide input.

Benefits

46) A positive effect of the joint working was the pace of delivery and the efficiency of the work. As a result, the study was completed early and under budget.
47) There was also significant capacity building in both organisations and a real interchange of skills and knowledge. This suggested untapped potential for working together more.
48) For either party to have done this alone would have resulted in a learning curve either to develop industrial and technical knowledge or methodological skills.
49) The management of processes was considered to be better and crisper because the potential learning curves were minimised.

Improvements

50) A proposed improvement would have been to have a member of Ofwat's Executive Team on the Steering Group.

Ofcom-OFT collaboration

Project Beacon

51) On 7 June 2012 Vodafone and O2 announced their intention to enter into a network sharing arrangement relating to their current and future mobile coverage across the UK. The transaction included three main elements: (i) a shared radio access network (RAN) operated by each operator in one half of the UK; (ii) a shared transmission network ((i) and (ii) are the "active" assets covered by the arrangement); and (iii) a new joint venture company to manage their combined portfolio of sites (the "passive" assets).
52) One of the conditions to completing the transaction as set by the parties was Ofcom's confirmation that it did not intend to launch a Competition Act investigation in respect of the RAN sharing arrangements. Although there is no formal mechanism for Ofcom to 'approve' such arrangements, it is open to Ofcom to provide informal (and non-binding) guidance to the parties.
53) Ofcom considered whether the active part of the transaction (i.e. the RAN and transmission network asset sharing arrangements) could give rise to competition concerns. Concurrently, the parties notified the passive part of the transaction (i.e. the site management JV) to the OFT under the merger review process.
54) The Ofcom and OFT case teams cooperated extensively throughout the process. Although each case team focussed its analysis on separate aspects of the transaction, we sought to undertake our respective analyses in parallel, sharing preliminary conclusions as they developed. The case teams maintained frequent communication throughout the process, in the form of weekly conference calls as well as ad hoc communications to address specific issues. The OFT case team regularly called on Ofcom's technical expertise regarding the relevant markets and the operation of the industry, for instance consulting with Ofcom on RFIs before sending them to the parties. A member of the Ofcom case team also attended the OFT state of play meeting with the parties.
55) On 28 September 2012, Ofcom wrote to the parties informing them that it was not intending to open a Competition Act investigation into the active assets sharing arrangements covered by the transaction, subject to a number of amendments which had been proposed by the parties earlier in the process. On the same day the OFT announced its decision to clear the JV element of the transaction.

Project Canvas

56) Project Canvas was a joint venture between the BBC, ITV, C4, C5, BT, TalkTalk and Arqiva to agree a set of standards in relation to on demand TV platforms. It is now known as Youview. Following receipt of a complaint under Chapter I of the Competition Act from Virgin Media (later joined by other complainants) Ofcom assessed whether to open a formal investigation under the Act and on 19 October 2010 decided not to do so.
57) Ofcom worked closely with the OFT on this, including in the initial stages when it shared the complaints received and agreed with the OFT a letter on concurrency to send to Virgin Media. Subsequently, there were weekly catch ups between Ofcom and the OFT and the OFT attended key meetings with Virgin Media and the Canvas partners. There were also meetings between the OFT and Ofcom to discuss provisional reasoning at key stages, with the OFT providing some 'devil's advocate' input.

58) Once Ofcom had decided not to open an investigation, it shared with the OFT the letter to the parties informing them of that decision, prior to finalising it and coordinated between communications teams.

Local media assessments

59) Following the government's publication of the Digital Britain report in 2009, the OFT committed that it would request a local media assessment (LMA) from Ofcom for those mergers involving local newspaper, radio or TV assets that raise prima facie competition concerns.

Kent Messenger

60) In August 2011, the OFT asked Ofcom to provide it with an LMA in connection with the proposed acquisition by Kent Messenger Group of certain local newspaper titles from Northcliffe Media. Ofcom provided a detailed report to the OFT in September 2011.
61) In addition to providing the report, the working relationship between the OFT and Ofcom involved regular email and telephone contact, and a meeting around the time of the referral of the merger to the CC to discuss the issues more broadly.
62) The parties abandoned the merger following the referral to the CC.

Global Radio

63) In August 2012, the OFT asked Ofcom to provide input to its assessment of the completed acquisition of Real and Smooth Radio by Global Radio from Guardian Media Group.
64) Ofcom considered that in this case it was not appropriate to write a detailed report of the kind we provided in respect of the Kent Messenger/Northcliffe merger, given the lack of evidence on relevant customer benefits and the request by the parties for a 'fast-track' reference to the CC. However, it did contribute to the OFT's merger assessment by providing it with our preliminary and high level views on aspects of the competitive implications of the merger.
65) Following referral of the merger, Ofcom has provided significant input to the CC's assessment. This has included an initial scoping meeting in October last year, responses to information requests primarily on radio regulation, and a hearing with the CC on potential remedies. The CC issued its report on the reference by in May.

Ofgem-OFT collaboration

66) Ofgem has worked collaboratively with the OFT on a Competition Act investigation which remains confidential and has not been publicly announced. The OFT's Chief Economist sat on the case steering group and provided input on issues arising in the course of the investigation. We also sought the advice of OFT case managers with experience of leading similar investigations.
67) Ofgem has benefitted from seconding a senior statistician from the OFT in order to assist in quantifying its major mis-selling cases into certain of the big 6 energy suppliers. We have consulted on GEMA's proposed penalty of £10.5m for SSE. Ofgem considers it extremely important to tackle sales practices which impact competitive conduct between energy suppliers to the detriment of consumers, and particularly vulnerable consumers.
68) In May 2012, as a result of another Competition Act investigation, Ofgem accepted binding commitments from ENW which addressed our competition concerns. On ENW, Ofgem kept the concurrency working party up to date and Ofgem also discussed the commitments with OFT before accepting them.

69) In 2010 for the National Grid case we secured a fine of £15m for abuse of dominance in metering. During that case, Ofgem was able to benefit from the OFT's involvement in procedural issues – including with respect to access to file. Ofgem's liability decision was upheld throughout the appeals process which followed. This decision is currently the subject of a follow-on damages action in the CAT.
70) Ofgem had discussions with the OFT on a Competition Act investigation into two Scottish generators on account of a suspected position of dominance arising from transmission constraints between England and Scotland. We also made a presentation to the OFT on the market power licence condition which we pursued following that case and which came into effect in October 2012 (the 'Transmission Constraint Licence Condition').

Main discussion points

Different levels of input?

71) The group agreed that there was a need for clarity in respect of the level of time commitment, whether it would be a physical or virtual secondment and the level of access to case information. A sliding scale of secondment support was proposed, recognising that "one size will not fit all". It is suggested that a useful model may be the formulation of a "grid" with three to four modes of engagement from for example
    a) senior involvement on a steering committee to provide challenge to decisions;
    b) secondment to a case team for the duration of the investigation;
    c) peer review of draft decision documents

Who pays?

72) Clarity would be required around the planning and cost of secondment resource.
73) The group suggest that a "lender pays" approach would encourage moderation and avoids creating a disincentive to using secondees as it will carry a cost. Where it is possible, recognising the differing skill sets of the different regulators, consideration of swopping resources may be possible.
74) Ultimately, however, payment is likely to be the subject of some negotiation. Providing a framework or templates might speed up this negotiation, not avoid it.

Table 1: Templates for staff sharing

Mode of Engagement	Governance	Employment	Financing	Constituent documents
"Ad hoc" Applicable for relatively small (staff work part-time) and/or time-bound (<2 months) staff sharing	Borrowing organisation governance applies	No change	Loaning organisation funds	Template "letter of engagement"
"Tactical support" Applicable for longer-term	Borrowing organisation governance applies	Secondment agreement	For negotiation	Template "letter of engagement"

and/or full-time projects but without shared governance				
"Joint project"	Borrowing organisation takes decision, but confirmation in project documentation of how senior staff from lending organisation will engage	Secondment agreement	For negotiation	Template "Joint Project Agreement"
"Decision-maker loan" Ad hoc lending of senior staff to participate in taking decisions	Borrowing organisation takes decision	No change	Lending organisation funds	Template "letter of engagement"

Observations / Further points of discussion

Decision making

75) The Draft SI Policy Note states that the CMA Rules (which will apply to concurrent regulators) will state that CMA panel members can take, or be involved in antitrust decisions.

76) It is recognised, however, that some regulators only have statutory provision to appoint their own staff to decision-making panels. Currently under the regulations, the secondee becomes an "officer of the appointor" for the purposes of ss27-29. More thinking needs to be done on whether/how this should apply to sectoral regulators.

Transparency and assurance

77) We should design our approach so it builds and maintains public and stakeholder confidence in the operation of concurrency. To achieve this, it will be important:
    a) To show that open-minded thought is being given to emerging consumer detriment;
    b) To show that the various organisations collaborating on concurrency are equipped and active in effectively supporting and challenging one another;
    c) To show that effective action is being taken on emerging problems, whether or not that action takes the form of competition law cases.

Engagement between regulators

78) Having reviewed cases where collaboration between the OFT and regulators has been effective and productive, it is clear that senior engagement is an important part of the recipe for success.
79) It should be expected that, where the CMA is taking decisions that relate to a regulated market, senior staff from the relevant regulator(s) will play some role in the decision-making process, the detail of which is yet to be established.
80) Regular, board-level discussion of the state of competition in regulated markets is already part of the practice of most concurrent regulators. This should become a norm for all regulators.
81) Preparation for such board review might usefully benefit from staff from beyond the regulator in question, including competition specialists from the CMA and/or other regulators, where this can be done in a way that is compatible with relevant statutory provisions. Regulators' boards should enquire into the overall process by which established thinking is being challenged.

Public reporting

82) The CMA will produce an annual report on the operation of the concurrency framework. This can be an important tool in building confidence that the concurrent regime is operating in a co-ordinated way, and that emerging consumer detriment is being addressed effectively (whether or not through consumer cases).

Next steps

83) The work-group will now focus its work more and look at implementation questions.

84) First, we need to identify further gaps in this work. For instance, how should we take account of consumer concurrency? Our current view is that cooperation and sharing of best practice on consumer enforcement side is useful but lends itself to a less formal approach than is needed on competition concurrency.

85) Second, we need to identify the right vehicle to take forward the different elements covered in this report. This partly means making sure that we have fully identified all of the items that need to be covered in the SI, Guidance and CMA Rules (each of which is running as a separate project within the overall transition). It also means taking account of whether the content set out in this report should be taken up as part of a CMA Regulatory Relationships Strategy – which might mean the CMA itself would wish to lead on some elements.

86) Third, once the above two are clarified we should understand better what further work the JRG Working Group needs to do. At present, detailed work on three topics seems likely to be relevant:
    a) Develop a specification for a web-portal for exchange of information;
    b) Develop templates for various modes of resource collaboration, including for sharing of staff to decision-panels;
    c) Develop a baseline report on concurrency by April 2014.

87) Finally, once we have a clear agenda for the second half of 2013, we propose to review the Terms of Reference of the Working Group. It is currently constituted essentially as a discussion group; if it moves into implementation mode then some amendments to the personnel involved and *modus operandi* are likely to be appropriate.

Annex – Terms of Reference

Background

With the advent of the Competition and Markets Authority the JRG is reviewing the operation of concurrency. The Regulatory Chairs' Group has asked JRG to do this, and to set out plans to operate concurrency in way that it works effectively, and is seen to work effectively.

Objectives

The work aims to identify:

- What will success look like;
- How the operation of concurrency can be made appropriately transparent;
- What resource-sharing and collaboration processes need to be created.

It then aims to ensure that the arrangements underpinning concurrency post-ERR Bill (the SI, Guidance, MoUs and operational agreements, Ministerial steer) deliver against those expectations.

Work products and Timescale

The group will:

- Hold a workshop in March-April
- Feed into BIS thinking during March-June on SI drafting
- Feed into OFT/CMA/BIS thinking on guidance (looking to consultation in late September), recognising that the CWP will be the main vehicle for collaboration on this
- Develop with CMA a report on "operational expectations", which will be a quarry for MoUs as these start to be developed
- Produce a report to the JRG. A draft will be produced for the JRG's May meeting, with a final report before the September meeting;
- The group will recommend the right timing to publish the report produced by the Splice 6 group in 2012;
- Liaise with the OFT, CMA and CWP to ensure smooth implementation of agreed approaches;
- Report on implementation in spring 2014.

Membership

All JRG members with concurrent powers will nominate a participant.

Governance

CAA will chair meetings and ensure progress for 2013. Reports will go forward to the quarterly JRG meeting for comments and adoption. Consideration and adoption of policy positions arising from the work will be taken forward through individual regulators' normal governance processes.